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TRIAL

OF

WILLIAM W. HOLDEN,

GOVERNOR OF NORTH CAROLINA,

BEFORE THE SENATE OF NORTH CAROLINA,

ON

IMPEACHMENT

BY THE HOUSE OF REPRESENTATIVES

FOR

HIGH CRIMES AND MISDEMEANORS.

PUBLISHED BY ORDER OF THE SENATE.

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TRANSACTIONS

OF THE HOUSE OF REPRESENTATIVES,

IN CONNECTION WITH THE

MEASURES OF IMPEACHMENT OF

WILLIAM W. HOLDEN,

GOVERNOR OF NORTH CAROLINA.

Resolution in relation to W. W. Holden, Governor:

Resolved, That William W. Holden, Governor of North Carolina, be impeached of high crimes and misdemeanors in office.

Introduced by Mr. Strudwick, of Orange, and referred to judiciary committee, Dec. 9th, 1870.

REPORT OF JUDICIARY COMMITTEE ON THE RESOLUTION TO IMPEACH GOV. HOLDEN.

The Judiciary Committee, to whom was referred on the 9th of Dec. inst., the following resolution, namely:

"*Resolved*, That William W. Holden, Governor of North Carolina, be impeached of high crimes and misdemeanors in office,"

have considered the same and submit the following report:

That William W. Holden, Governor of North Carolina, unmindful of his oath of office did in July last organize, arm and equip a military force not recognized by, but in subversion of, the constitution of the state of North Carolina; which military force, so unlawfully organized, was not kept under subordination to and governed by the civil power, but was by the order of the said William W. Holden, Governor, as aforesaid, made paramount to, and subversive of the civil authority.

That the said William W. Holden, Governor as aforesaid, did, in the month of July and August last, without lawful warrant and authority, and in defiance and subversion of the constitution, arrest and imprison many of the peaceable and law-abiding citizens of the state, depriving them of their liberties and privileges, and

certain of said citizens, so unlawfully arrested and imprisoned, did cause to be subject to cruel and unusual punishment.

That the said William W. Holden, Governor as aforesaid, denied to citizens unlawfully restrained of their liberty by his authority, all remedy to enquire into the lawfullness thereof, and in defiance of the constitution, the laws, and the process of the courts, he suspended the privileges of the writ of *habeas corpus*, claiming that he was governed by a "supreme law" whereby he could deny the privileges of the said writ when, in his opinion, the safety of the state required it.

In view of the matters herein set forth, combining historical facts with statements contained in public documents, and the records of the public departments and the courts, the undersigned members of the committee, who are a majority thereof, are of the opinion, that William W. Holden, Governor of the state of North Carolina, be impeached of high crimes and misdemeanors. They therefore recommend to the House the adoption of the accompanying resolution:

(Signed,)

T. Sparrow,
C. W. Broadfoot,
Lee M. McAfee,
S. A. Ashe,
John D. Stanford,
George H. Gregory,
Henry T. Jordan,
John W. Dunham,
R. P. Waring,
James G. Scott,
W. P. Welch,
David Settle,
F. W. Strudwick,
C. M. T. McCauley,
Thos. D. Johnston.

1890. Lee

Resolutions offered by committee:

Resolved, That William W. Holden, Governor of the state of North Carolina, be impeached of high crimes and misdemeanors in office.

Read and adopted by House of Representatives, December 14th, 1870, and ratified same day by the speaker, T. J. Jarvis.

Resolution to inform the Senate:

Resolved, That a committee of three be appointed to go to the Senate, and at the bar thereof, and in the name of the House of Representatives, and of all the people of the State of North Carolina, to impeach William W. Holden, Governor of the State of North Carolina, of high crimes and misdsmeanors in office, and acquaint the Senate that the House of Representatives will in due time exhibit particular articles of impeachment against him, and make good the same, and that the committee do demand that the Senate do take order for the appearance of said William W. Holden to answer to said impeachment.

Resolved, That a committee of seven be appointed to prepare and report articles of impeachment against William W. Holden, Governor of the State of North Carolina, with power to send for persons, papers, and records, and to take testimony under oath.

Introduced by Mr. Sparrow and adopted Dec. 15th, 1870.

Charge of Speaker to committee of information:

HOUSE OF REPRESENTATIVES, Dec. 15th, 1870.

Messrs. Strudwick, Welch and Sparrow:

GENTLEMEN: In accordance with resolutions which have passed this House, a copy of which is hereby handed you, you are hereby appointed to appear at the bar of the Senate in the name of the House of Representatives and all the good people of North Carolina, to impeach William W. Holden, Governor of North Carolina, of high crimes and misdemeanors in office.

(Signed) THOS. J. JARVIS,
Speaker of House of Rep.

Report of committee of communication made to the House Representatives, Dec. 15th, 1870:

Mr. SPARROW said:

Mr. SPEAKER: In obedience to the order of the House we proceeded to the bar of the Senate, and in the name of this body and of all the people of the State of North Carolina, we impeached, as we were directed to do, William W. Holden, Governor of North Carolina, of high crimes and misdemeanors; and we demanded that the Sanate should take order to make him appear before that body to answer for the same, and announced that the House would soon present articles of impeachment, and make good the same. To which the response was, "The Senate has received the message, and will consider the same, and take proper action thereon.

Report of the Committee appointed by the House to prepare articles of impeachment against William W. Holden, Governor of the State of North Carolina for high crimes and misdemeanors. (See Report Dec. 24th, Senate Proceedings.)

Presented Dec. 19th, 1870.

House in Committee of the Whole, Dec. 19th, 1870. Mr. Strudwick in the chair.

Mr. Welch moved that the articles of impeachment be taken up and read seriatim. The motion prevailed and Article I was read and adopted. Article 2 was read and announced by

the chair as adopted. A call for a division was made when the chair ruled the call out of order.

Mr. Harris, of Franklin, appealed from the ruling and the chair was sustained by the committee.

Articles 3, 4, and 5, were then then taken up and adopted, when Mr. Mabson moved that the committee rise and report progress. The motion was not adopted, and Article 6 was read and adopted. Article 6 was then read and adopted, and Article 8 was read and adopted.

On motion of Mr. Jarvis the Articles as a whole were adopted,

When Mr. Jarvis offered the following resolution :

That the committee of the whole now proceed to elect by ballot seven Managers, members of this House of Representatives, to conduct the impeachment of W. W. Holden before the bar of the Senate, and that the committee recommend the House to confer upon said committee power to associate with them other counsel learned in the law.

Mr. Robinson placed in nomination the following gentlemen who were elected : Messrs. Sparrow, Gregory, Dunham, Welch, Johnston, of Buncombe, Scott and Broadfoot. And committee rose and reported progress and asked to be relieved from further consideration.

Mr. Strudwick then offered the following report from the Committee of the whole.

Mr. SPEAKER : The House having resolved itself into a Committee of the Whole for the purpose of considering the Articles of Impeachment against W. W. Holden, Governor of North Carolina, and nominating seven managers to prosecute the same, beg leave to report: The Committee of the Whole have had the same under consideration and recommend that the Articles of Impeachment against said W. W. Holden which were referred to the Committee be adopted by the House of Representatives. The Committee also recommend Messrs. Sparrow, Gregory, Welch, Johnston, Broadfoot, Scott and Dunham as a board of managers to conduct the impeachment of W. W. Holden, with power to employ other counsel if they see proper to do so.

Resolution that a message be sent to the Senate.

Resolved, That a message be sent to the Senate to inform them that this House has appointed managers to conduct the impeachment against the Governor of the

State of North Carolina, and have directed the said managers to carry to the Senate the Articles agreed upon by the House, to be exhibited in maintenance of their impeachment against William W. Holden, Governor of said State, and that the clerk of the House go with said message.

Adopted Dec. 19th, 1870. [By Dunham.]

Resolution to authorize Managers of Impeachment to employ a clerk and messenger.

Resolved, That the Managers on the part of the House in the matter of Impeachment of the Governor, be and hereby are authorized to appoint a clerk and a messenger to be paid for their services at the usual rates during the time that they are employed, and that the managers have power to send for persons and papers.

Adopted Dec. 20th, 1870. [By Gregory.]

Resolution in regard to conducting the impeachment.

WHEREAS, The Senate has notified the House that the Senate will receive the Articles of Impeachment against W. W. Holden to-day at 11 a. m.,

Resolved, That the House of Representatives attend the managers to the Senate chamber at 11 o'clock in the following order:

First, the Managers two and two headed by their chairman;

Second, the Speaker of the House;

Third, the Principal and Assistant Clerks;

Fourth, the members two and two;

Provided, That any members desiring it be excused from attending the Managers.

Adopted Dec. 20th, 1870. [By Strudwick.]

REPLICATION by the House of Representatives of the State of North Carolina to the answer of William W. Holden, Governor of North Carolina to the Articles of Impeachment exhibited against him by the House of Representatives.

[See Replication third day's proceedings.]

Adopted January 24th, 1871.

Resolution to inform the Senate that the House has adopted a replication to the answer of William W. Holden, Governor, &c.:

Resolved, That a message be sent to the senate by the clerk of the house, informing the senate that the house of representatives has adopted a replication to the answer of William W. Holden, governor of North Carolina to the articles of impeachment exhibited against him and that the same will be presented to the senate by the managers on the part of the house.

Adopted Jan. 24th, 1871. [By Mr. Sparrow.]

Order of the House of Representatives relative to amendment

of Article 8 of Impeachment of W. W. Holden, Governor of North Carolina:

It is ordered by the House of Representatives that the Board of Managers of the Impeachment of William W. Holden, Governor of North Carolina, ask leave of the Senate, sitting as the Court of Impeachment, to allow the House of Representatives to amend Article 8 of Impeachment heretofore exhibited by them against the said William W. Holden, Governor as aforesaid, and now pending before the Senate sitting as said Court, by striking out the name "Richard T. Berry," wherever the same may occur in said article, and inserting instead thereof, the name of "John B. Neathery," and that the said Managers be, and they are hereby authorized to make such amendment if the Senate, sitting as such court shall so allow.

Adopted Jan. 26th, 1871.

Resolution concerning Article 9 of the Articles of Impeachment of W. W. Holden, Governor &c.:

Resolved, That the additional article of impeachment just introduced be referred to the special committee on articles of impeachment, and that they be empowered to send for persons and papers.

Adopted Feb. 9th, 1871. [By Mr. Robinson.]

PRELIMINARY PROCEEDINGS IN THE SENATE,

TOUCHING THE TRIAL OF IMPEACHMENT

OF WILLIAM W. HOLDEN, GOVERNOR.

SENATE CHAMBER. Dec. 15th 1870.

A committee from the House of Representatives to wait on the Senate having been duly announced and invited to enter the chamber came forward and addressed the Senate, through Mr. Welch, as follows:

Mr. PRESIDENT AND SENATORS: We would display the most callous indifference—the most remarkable and unnatural absence of sensibility if, in appearing at the bar of the Senate of North Carolina, in obedience to the commands of the Representatives of the people, charged as we are, with the performance of so solemn a duty, that of the impeachment of the Governor of a great Commonwealth, were we not oppressed with the awful responsibilities of the situation; but sustained by a consciousness of right, and calling to the aid of our inexperience the experience of one of England's purest patriots and most distinguished statesmen, we proceed with more confidence than we would otherwise have.

Permit us Mr. President and Senators, to adopt almost the very language used by him under circumstances somewhat similar, and to ask: "What is it we want here to a great act of national justice?" "Do we want a cause?" "You have the cause of an oppressed people." "Do you want a criminal?" "Where was there so much iniquity ever laid to the charge of any one?" Senators, "is it a prosecutor you want?" "You have before you the Representatives of the people of North Carolina." "Do you want a tribunal?" Where will you find one superior to this? Therefore it is that, ordered by the Representatives of the people of this Commonwealth, we impeach William W. Holden, Governor of the State of North Carolina "of high crimes and misdemeanors in office."

We "impeach him in the name of the Representatives of North Carolina whose national character he has dishonored."

We "impeach him in the name of all the people of North Carolina whose laws, rights and liberties he has subverted."

We "impeach him in the name and by virtue of those eternal laws of justice which he has violated."

We impeach him in the name of human nature itself which he has cruelly outraged, injured and oppressed; and in the name of the Representatives of the peo-

ple do demand that the Senate organize a high court of impeachment and take order that William W. Holden appear at its bar to answer the particular charges which the House of Representatives will in due time exhibit, and that the Senate do make such other and further orders in the premises as may seem to them best calculated to bring this trial to a just and speedy termination; and in conclusion, the House of Representatives, through us, most heartily prays that God, the God of Eternal Justice may protect the right.

On motion of Mr. Warren, the President on behalf of the Senate announced to the gentlemen of the committee from the House of Representatives that the Senate would receive their message, duly consider the same and take proper action thereon. Thereupon the committee retired.

DECEMBER, 19th, 1870.

A message was received from the House of Representatives informing the Senate that the House had agreed upon Articles of Impeachment against Willliam W. Holden, Governor of North Carolina, and that the Managers appointed by the House to conduct the trial would appear before the Senate and exhibit said articles whenever it would be the pleasure of the Senate to receive them.

On motion of Mr. Jones, a message was sent to the House informing that body that the Senate would receive the Managers and the Articles of Impeachment to morrow morning at eleven o'clock.

DECEMBER 20th, 1870.

A committee from the House of Representatives having been announced, the Managers on the part of the House accompanied by a committee of the whole House came forward and exhibited Articles of Impeachment against William

W. Holden, Governor of North Carolina, and demanded that the Senate take order thereon. Thereupon proclamation having been duly made, the articles were read by the clerk in the words following:

ARTICLES exhibited by the House of Representatives of the State of North Carolina, in the name of themselves and all the people of the State of North Carolina, against William W. Holden, Governor of the State of North Carolina, in maintenance and support of their impeachment against him, for high crimes and misdemeanors in his said office.

ARTICLE I.

That by the Constitution of the State of North Carolina, the Governor of said State has power to call out the militia thereof to execute the laws, suppress riots or insurrection, and repel invasion, whenever the execution of the law shall be resisted, or there shall exist any riot, insurrection or invasion, but not otherwise; that William W. Holden, Governor of said State, unmindful of the high duties of his office, the obligation of his solemn oath of office, and the Constitution and laws of said State, and intending to stir up civil war, and subvert personal and public liberty, and the Constitution and laws of said State, and of the United States, and contriving and intending to humiliate and degrade the saic State and the people thereof, and especially the people of the county of Alamance, and to provoke the people to wrath and violence, did, under the color of his said office, on the seventh day of March, in the year of our Lord, one thousand eight hundred and seventy, in said State, of his own false, corrupt and wicked mind and purpose, proclaim and declare that the county of Alamance in said State, was in insurrection, and did, after the days and times last aforesaid, send bodies of armed, desperate and lawless men, organized and set on foot without authority of law, into said county, and occupy the same by military force, and suspend civil authority, and the Constitution and laws of the State; and did, after the days and times last aforesaid, and before the time of impeachment in this behalf, through and by means of such armed, desperate and lawless men, arrest many peaceable and law-abiding citizens of said county of Alamance, then and there about their lawful business; and did detain, hold, imprison, hang, beat and otherwise maltreat and injure many of them, to-wit: Lucian H. Murray, George S. Rogers, William Bingham, Alexander Wilson, Walter Thornton, William Redding, Thomas M. Holt, George Andrews, John Andrews, Frederick Blanchard, Adolphus G. Moore, John Roberson, James N. Holt, William Tate, Alexander Patton, Jesse Grant, Lemuel Whitsett, Josiah Thompson, Sidney Steel, George Johnson, William Patton, Joseph Wright, Benjamin McAdams, Ruffin Andrews, Thomas Ray, Joseph Prichard, Loften Tear, Joseph Thompson, Henry Cooke, William Andrews, M. N. Shaw, John Long, James H. Anderson, Joseph Gibson, Henry Prichard, Joseph Nelson, James R. Murphy, Jr., William Kirkpatrick, Thomas Gray, Jefferson Younger, Frank Mebane, Clement Curtis, John W. McAdams, William Moore, William Clendenden, D. W. Weeden, Daniel Moses, P. Thompson, David Moore, Monroe Fowler, Henry C. Hurdle, William Whitsett, Albert Murray, J. G. Moore, Joseph Kirkpatrick, W. V. Montgomery, John Trollinger, Jerry Whitsett, Calvin Gibson,

John G. Albright, Robert Hannah, William Johnson, Henderson Scott, William Stockard, James Dickson, K. A. Albright, Thomas Lutterloh, John Grant, James Foust, John Curtis, A. Thompson, Robert Stockard, J. A. Moore, James T. Hunter, James S. Scott, John Smith, George Andrews, Milton Pickard, Henry Robertson, John R. Stockard, John Curtis and Joseph Stockard, when in fact and truth there was no such or any insurrection in said county of Alamance. And he, the said William W. Holden, governor as aforesaid, well knew that such and said proclamation was groundless and false, and that there was no insurrection in said county, and that all civil authorities, both state and county, in said county, were peacefully and regularly in the full, free and unrestrained exercise in all respects, of the functions of their offices, and the courts were all open, and the due administration of the law was unimpeded by any resistance whatsoever, whereby the said William W. Holden, governor as aforesaid, did then and there, and in the way and manner, and by the means aforesaid, commit and was guilty of a high crime in office against the constitution and laws of soid state, and the peace, interests and dignity thereof.

Article II.

That by the constitution of the state of North Carolina the governor of said state has power to call out the militia thereof to execute the law, suppress riots or insurrection whenever the execution of the law shall be resisted, or there shall exist any riot, insurrection or invasion, but not otherwise. That William W. Holden, governor of said state, unmindful of the high duties of his office, the obligations of his solemn oath of office and the constitution and laws of said state, and intending to stir up civil war, and subvert personal and public liberty, and the constitution and laws of said state and of the United States, contriving and intending to humiliate and degrade the said state and the people thereof, and especially the people of the county of Caswell in said state, and to provoke the people to wrath and violence, did under the color of his said office, on the eighth day of July, in the year of our Lord one thousand eight hundred and seventy, in said state, of his own false, corrupt and wicked mind and purpose, proclaim and declare the county of Caswell in said state in insurrection, and did after the days and times last aforesaid, send bodies of armed, desperate and lawless men, organized and set on foot without authority of law, into the said county and occupy the same by military force and suspend the civil authority and the constitution and laws of the state, and did, after the days and times last aforesaid, and before the time of impeachment in this behalf, through and by means of such armed, desperate and lawless men, arrest many peaceable and law-abiding citizens of said county of Caswell, then and there about their lawful business, and did detain, hold, imprison and otherwise maltreat and injure both of them, to wit: John Kerr, Samuel P. Hill, William B. Bowe, Nathaniel M. Roane, Frank A. Wiley, Jessee C. Griffith, J. T. Mitchell, Thomas J. Womack, A. G. Yancey, John McKee, A. A. Mitchell, Yancy Jones, J. M. Neal, Barzillai Graves, Robert Roane, James R. Fowler, M. C. Hooper, James C. Williamson and Peter H. Williamson, when, in fact and truth, there was no such or any insurrection in said county of Caswell, and he, the said William W. Holden, governor as aforesaid, well knew that such and said proclamation was utterly groundless and false, and that there was no insurrection in said county of Caswell, and that all the civil authorities, both state and county, in

said county, were peacefully and regularly in the full, free and unrestrained exercise in all respects of the functions of their offices, and the courts were all open and the due administration of the law was unimpeded by any resistance whatsoever, whereby the said William W. Holden, governor as aforesaid, did then and there, and in the way and manner, and by the means aforesaid, commit and was guilty of a high crime in office against the constitution and laws of said state, and the peace, interest and dignity thereof.

Article III.

That the said William W. Holden, Governor of the State of North Carolina, on the fifth day of August, in the year of our Lord one thousand eight hundred and seventy, in the County of Orange, in said State, did then and there unlawfully, and without any lawful warrant and authority, and in defiance and subversion of the Constitution and laws of said State, and in violation of his oath of office, and under color of his said office, incite, procure, order and command on John Hunnicutt and other evil disposed persons to assault, seize detain and imprison and deprive of his liberty and privileges as a freeman and citizen of said State, Josiah Turner, Junior, a citizen and resident of the county of Orange in the State aforesaid, and in pursuance of said incitement, procurement, order and command the said John Hunnicutt and the evil disposed persons aforesaid did assault, seize, detain imprison and deprive of his liberty and privileges as a freeman and citizen of said County and State for a long time, to-wit: For the time of ten days and more, the said Josiah Turner, Junior, whereby the said William W. Holden, Governor as aforesaid, did then and there commit a high misdemeanor in office against the Constitution and laws of said State, and the peace, interests and dignity thereof.

Article IV.

That the said William W. Holden, Governor of the State of North Carolina, on the first day of August, in the year of our Lord one thousand eight hundred and seventy, in the County of Caswell in said State, did then and there unlawfully and without any lawful warrant and authority, and in defiance and subversion of the Constitution and laws of said State, and in violation of his oath of office, and under color of his said office, incite procure, order and command one George W. Kirk, and one B. G. Burgen and other evil disposed persons, to assault, seize, detain and imprison and deprive of their liberty and privileges as freemen and citizens of said State, John Kerr, Samuel P. Hill. William B. Bowe and Nathaniel M. Roane, citizens and residents of the County of Caswell in the State aforesaid; and in pursuance of said incitement, procurement, order and command, the said George W. Kirk and the said B. G. Burgen, and the evil disposed persons aforesaid, did assault, seize, detain, imprison and deprive of their liberty and privileges as freemen and citizens of said County and State for a long time, to-wit: For the time of one month and more, the said John Kerr, Samuel P. Hill, William B. Bowe and Nathaniel M. Roane, whereby the said William W. Holden, Governor as aforesaid, did then and there commit and was guilty of a high misdemeanor in office against the Constitution and laws of said State and the peace, interests and dignity thereof.

ARTICLE V.

That the said William W. Holden, Governor of the State of North Carolina, heretofore, to-wit: in the months of June, July and August in the year of our Lord one ahousand eight hundred and seventy, under color of his said office, unlawfully recruited, armed and equipped as soldiers, a large number of men to wit: five hundred men and more, and organized them as an army, and appointed officers to command, and use such armed men as he, the said William W. Holden, Governor, under color of his said office, might from time to time order and direct; that during the said months of June, July and August, he the said William W. Holden, Governor as aforesaid, under color of his said office, placed a large number of said armed men under the immediate control of one George W. Kirk as Colonel, aided by one B. G. Burgen as Lieutenant Colonel, one H. C. Yates as Major, and sundry other persons as Captains and Lieutenants, and sent such last mentioned armed men under the immediate command of George W. Kirk, as Colonel, B. G. Burgen, as Lieutenant Colonel, H. C. Yates, as major, and said sundry other persons as Captains and Lieutenants, into the County of Alamance, and by the procurement, order and command of him, the said William W. Holden, Governor as aforesaie, under color of his said office, the said armed men last aforesaid, seized, held, detained and imprisoned, in said County of Alamance, one Adolphus G. Moore, a peaceable and law-abiding citizen of said County, then and there engaged about his lawful business; that the said Adolphus G. Moore, being so seized, held, detained and imprisoned and deprived of his liberty, was then and there in the custody of the said George W. Kirk, acting as Colonel, and commanding the armed body of men, last aforesaid, by the order, command and procurement of the said William W. Holden; that the said Adolphus G. Moore being so seized, held and imprisoned and deprived of his liberty, made due application to the Honorable Richmond M. Pearson, Chief Justice of the Supreme Court of said State, as by law he might do, for the writ of *habeas corpus*, to the end, that he the said Chief Justice might duly enquire the cause of said seizure, detention and imprisonment, and deliver him from the same according to law. That the said Chief Justice issued the writ of *habeas corpus* at the instance of the said Adolphus G. Moore, directed to the said George W. Kirk, commanding him forthwith to produce the body of the said Adolphus G. Moore, before him the said Chief Justice, at the Chamber of the Supreme Court in the City of Raleigh, in said State; that the said George W. Kirk was, on the seventeenth day of July, in the year of our Lord one thousand eight hundred and seventy, in the County of Alamance, duly served with the said writ of *habeas corpus;* that he made no return of or to the same, as required by law, and refused to produce the body of the said Adolphus G. Moore before the Chief Justice according to the exigency of said writ, avowing and declaring that he had made such seizure and detained and imprisoned the said Adolphus G. Moore at the instance of and by the procurement, command and order of the said William W. Holden, Governor as aforesaid, and would not produce the body of him, the said Adolphus G. Moore, before the said Chief Justice according to the exigency of said writ, unless compelled so to do by superior armed force, or by the express order and command of the said William W. Holden, Governor as aforesaid; that such refusal of the said George W. Kirk to obey the said writ, was made duly to appear before the Chief Justice, whereupon the said Chief Justice made enquiry of the said William W. Holden,

Governor as aforesaid, if he had so ordered the said George W. Kirk to so seize, detain and imprison the said Adolphus G. Moore; that the said William W. Holden, Governor as aforesaid, made answer in substance, and to the effect to said enquiry of said Chief Justice, that he had theretofore ordered and commanded the said George W. Kirk to so seize, detain and imprison and deprive of his liberty the said Adolphus G. Moore, and that such seizure and detention was made by his order and command, whereupon the said Chief Justice, upon due consideration, solemnly adjudged in substance and effect that according to the Constitution and laws of said State, the privilege of the writ of *habeas corpus* was not suspended, and that the said George W. Kirk and the said William W. Holden, Governor as aforesaid, were in duty bound to bring and produce the body of the said Adolphus G. Moore, before him the said Chief Justice, according to the exigency of the said writ; yet the said William W. Holden, Governor as aforesaid, unmindful of his most solemn oath of office, and his high duties as the Executive of said State, and contriving, and then and there intending to deprive the said Adolphus G. Moore of his liberty as a free citizen of said State, and to defy and subvert the Constitution and laws of said State, declared that he had so ordered, and did still so order and commanded the said George W. Kirk not to obey the said writ so issued by the said Chier Justice, and then and there declared to the said Chief Justice, that he, the said William W. Holden, Governor as aforesaid, would not obey the said writ, or the command of the said Chief Justice in that behalf, and that he would not allow the said George W. Kirk to obey the same and produce the body of the said Adolphus G. Moore, before the said Chief Justice, according to the exigency of said writ, until such time as in his discretion he might think proper so to do; that while the said William W. Holden, Governor as aforesaid, so seized, held, detained, imprisoned and deprived of his liberty, said Adolphus G. Moore, and so refused to obey the said writ, and to command the said George W. Kirk so to do, and so resisted the laws and the lawful authority of the said Chief Justice, he was by his own procurement, order and command supported in that behalf by the means and use of said armed men, so commanded and controlled as aforesaid, and so the said William W. Holden, Governor as aforesaid, did in the way and manner, and by the means aforesaid, procure, order and command the said George W. Kirk, so charged by said writ of *habeas corpus*, to refuse to make due return of or to the same, and produce the body of the said Adolphus G. Moore, before the said Chief Justice, according to the exigency of the said writ, and to resist the same and the lawful authority of the said Chief Justice, and did himself then and there in the way and manner and by the means aforesaid, resist the due execution of the said writ, and the lawful authority of the said Chief Justice, and did then and there in the way and manner, and by the means and armed force aforesaid, suspend the privilege of the writ of *habeas corpus*, and did unlawfully and violently seize, detain, hold, imprison and deprive of his liberty, the said Adolphus G. Moore, and for a long time, to-wit: for the space of one calendar month, after the said Chief Justice had adjudged such detention illegal, did continue to hold and detain and caused to be held and detained said Adolphus G. Moore, and did in the way and manner and by the means aforesaid, make the militarys upersede and prevail over the lawful civil power of the State, all of which acts, matters and things, the said William W. Holden, Governor as aforesaid, did, as aforesaid, in violation of his solemn oath of office, and whereby he the said William W. Holden, Governor as aforesaid,

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did then and there commit high crimes and misdemeanors in office, against the Constitution and laws of said State, and the peace, dignity and interests thereof.

ARTICLE VI.

That the said William W. Holden, Governor of the State of North Carolina, heretofore, to-wit: in the months of June, July and August, in the year of our Lord one thousand eight hundred and seventy, under colot of his said office, unlawfully recruited, armed and equipped as soldiers a large number of men, to-wit: five hundred men and more, and organized them as an army, and appointed officers to command and use such armed men as he, the said William W. Holden, Governor as aforesaid, under color of his said office, might from time to time order and direct; that during the said months of June, July and August, he, the said William W. Holden, Governor as aforesaid, under color of his said office, placed a large number of said armed men under the immediate command and control of one George W. Kirk, as Colonel, aided by one B. G. Burgen, as Lieutenant Colonel, one H. C. Yates, as Major, and sundry other persons as Captains and Lieutenants, and sent such last mentioned armed men under the immediate command of George W. Kirk, as Colonel, B. G. Burgen, as Lieutenant Colonel, H. C. Yates, as Major, and said sundry other persons as Captains and Lieutenants, in the County of Caswell, and by the procurement, order and command of him, the said William W. Holden, Governor as aforesaid, under color of his said office, the said armed men last aforesaid seized, held, detained and imprisoned in said County of Caswell, John Kerr, Samuel P. Hill, Jesse C. Griffith, Frank A. Wiley, J. T. Mitchell, Thomas J. Womack, A. G. Yancey, John McKee, A. A. Mitchell, Yancey Jones, J. M. Neal, William B. Bowe, Barzillai Graves, Nathaniel M. Roane, Robert Roane, James R. Fowler, M. Z. Hooper, James C. Williamson and Peter H. Williamson, peaceable and law-abiding citizens of said County, then and there engaged about their lawful business; that the said John Kerr, Samuel P. Hill, Jesse C. Griffith, F. A. Wiley, J. T. Mitchell, T. J. Womack, A. G. Yancey, J. McKee, A. A. Mitchell, Yancey Jones, J. M. Neal, W. B. Bowe, Barzillai Graves, N. M. Roane, Robert Roane, J. R. Fowler, M Z. Hooper, Jas. C. Williamson and Peter H. Williamson, being so seized, held detained and imprisoned and deprived of their liberty, were then and there in the custody of the said George W. Kirk, acting as Colonel and commanding the armed body of men last aforesaid, for by the order, command and procurement of the said William W. Holden, governor as aforesaid; that the said John Kerr, Samuel P. Hill, Jesse C. Griffith, Frank A. Wiley, J. T. Mitchell, Thomas J. Womack, A. G. Yancey, John McKee, A. A. Mitchell, Yancey Jones, J. M. Neal, William B. Bowe, Barzillai Graves, Nathaniel M. Roane, Robert Roane, James R. Fowler, M. Z. Hooper, James C. Williamson and Peter H. Williamson being so seized, held and imprisoned and deprived of their liberty, made due application to the Honorable Richmond M. Pearson, chief justice of the supreme court of said state, as by law they might do, for the writ of *habeas corpus* to the end that he, the said chief justice, might duly enquire the cause of said seizure, detention and imprisonment, and deliver them from the same, according to law; that the said chief justice issued the writ of *habeas corpus* at the instance of the said John Kerr, Samuel P. Hill, Jesse C. Griffith, Frank A, Wiley, J. T. Mitchell, Thomas J. Womack, A. G. Yancey, John McKee, A. A. Mitchell, Yancey Jones, J. M. Neal, William B. Bowe, Barzillai Graves Nathaniel

M. Roane, Robert Roane, James R. Fowler, M. Z. Hooper, James C. Williamson and Peter H. Williamson, on the 26th day of July, in the year of our Lord one thousand eight hundred and seventy, directed to the said George W. Kirk, commanding him forthwith to produce the bodies of the said John Kerr, Samuel P. Hill, Jesse C. Griffith, Frank A. Wiley, J. T. Mitchell, Thomas J. Womack, A. G. Yancey, John McKee, A. A. Mitchell, Yancey Jones, J. M. Neal, William B. Bowe, Barzillai Graves, Nathaniel M. Roane, Robert Roane, James R. Fowler, M. Z. Hooper, James C. Williamson and Peter H. Williamson before him, the said chief justice, at the chamber of the supreme court in the city of Raleigh in said state; that the said George W. Kirk was, on the first day of August, in the year of our Lord one thousand eight hundred and seventy, in the county of Caswell, duly served with the said writ of *habeas corpus*, but instead of making due return to the said writ, stated that, "I hold the said prisoners under orders from W. W. Holden, governor and commander-in-chief of militia," and refused to produce the bodies of the said John Kerr, Samuel P. Hill, Jesse C. Griffith, Frank A. Wiley, J T. Mitchell, Thomas J. Womack, A. G. Yancey, John McKee, A. A. Mitchell, Yancey Jones, J. M. Neal, William B. Bowe, Barzillai Graves, Nathaniel M. Roane, Robert Roane, James R. Fowler, M. Z. Hooper, James C. Williamson and Peter H. Williamson before the said chief justice, according to the exigencies of the said writ; and thereafter the said George W. Kirk continued to hold and detain and deprive of their liberty the said John Kerr, Samuel P. Hill, Jesse C. Griffith, Frank A. Wiley, J. T. Mitchell, Thomas J. Womack, A. G. Yancey, John McKee, A. A. Mitchell, Yancey Jones, J. M. Neal, William B. Bowe, Barzillai Graves, Nathaniel M. Roane, Robert Roane, James R. Fowler, M. Z. Hooper, James C. Williamson and Peter H. Williamson for a long time, to wit: For the space of one calendar month, the said seizure and detention of the said John Kerr, Samuel P. Hill, Jesse C. Griffith, Frank A. Wiley, J. T. Mitchell, Thomas J. Womack, A. G. Yancey, John McKee, A. A. Mitchell, Yancey Jones, J. M. Neal, William B. Bowe, Barzillai Graves, Nathaniel M. Roane, Robert Roane, James R. Fowler, M. Z. Hooper, James C. Williamson and Peter H. Williamson by the said George W. Kirk and the military force under his command as aforesaid having been made and continued as aforesaid by the orders of the said William W. Holden, governor of the state aforssaid, he, the said William W. Holden, governor as aforesaid, well knowing that the privilege of the writ of *habeas corpus* was not suspended, and that the said John Kerr, Samuel P. Hill, Jesse C. Griffith, Frank A. Wiley, J. T. Mitchell, Thomas J. Womack, A. G. Yancey, John McKee, A. A. Mitchell, Yancey Jones, J. M. Neal, William B. Bowe, Barzillai Graves, Nathaniel M. Roane, Robert Roane, James R. Fowler, M. Z. Hooper, James C. Williamson and Peter H. Williamson were so detained without authority of law, whereby he, the said William W. Holden, governor as aforesaid, did then and there commit high crimes and misdemeanors in office against the constitution and laws of said state, and peace, dignity and interests thereof.

ARTICLE VII.

That the said William W. Holden, Governor of North Carolina, unmindful of his high duty to uphold and protect the Constitution and laws of said State, and the good name, dignity and honor of the people thereof, and unmindful of the

obligation of his solemn oath of office, under color of his said office, did, in the months of June, July and August, in the year of our Lord one thousand eight hundred and seventy, in said State, without any authority of law, but in contravention and subversion of the Constitution and laws of said State and the United States, and intending to provoke and stir up civil strife and war, recruit and call together from this State and the State of Tennessee a large number of men, to wit: Five hundred men and more, many of them of the most reckless, desperate, ruffianly and lawless characters, and did then and there organize, arm and equip them as an army of soldiers, and place the same under the chief command of a notorious desperado from the State of Tennessee, by the name of George W. Kirk, having falsely proclaimed the counties of Alamance and Caswell in said State in a state of insurrection, and did send large numbers of such armed desperate men into said counties, under the immediate command of the said George W. Kirk and two other desperadoes from the State of Tennessee, to wit: One B. G. Burgen and one H. C. Yates, and did there and then without any warrant or authority, seize, hold, imprison and deprive of their liberty for a long time, to-wit: For the time of twenty days and more, many of the peaceable and law-abiding citizens of said counties, to-wit: John Kerr, Samuel P. Hill, ——— Scott, John R. Ireland and many others, and seize, hold, imprison and deprive of their liberty, and hung by the neck William Patton, Lucian H. Murray and others, and did thrust into a loathsome dungeon Josiah Turner, Junior, and F. A. Wiley; and to maintain, support and aid the lawless armed men so organized, armed and equipped, did, under color of his said office from time to time during the said months of June, July and August, without any lawful authority, make his warrant upon David A. Jenkins, Treasurer of the State, for large sums of money, to-wit: For the sum of seventy thousand dollars and more, and cause and procure the said David A. Jenkins, the Treasurer of the State, to recognize such unlawful warrant, and pay out of the Treasury such said large sums of money to the agent or paymaster of the said William W. Holden, Govetnor as aforesaid, for the unlawful uses and purposes aforesaid, whereby the said William W. Holden, Governor as aforesaid, did then and there, and by the means and in the manner aforesaid, commit a high misdemeanor in office, in violation of the Constitution and laws of the State, and of the peace and interests and dignity thereof.

Article VIII.

That the said William W. Holden, Governor of the said State, unmindful of the high duties of his said office, and the obligations of his solemn oath of office, and contriving and intending, and with a view and for the purpose of supporting and maintaining an armed military force in said State, which he had then and there recruited, organized and formed for illegal purposes, without the sanction of the Constitution and laws of the said State, but in contravention of the same, did from time to time in the months of June, July and August, in the year of our Lord, one thousand eight hundred and seventy, under color of his said office, in said State, without the sanction of the Constitution and laws of the said State, and in violation of the same, make his warrants as such Governor upon the Treasury of the said State for large sums of money, to-wit: for the sum of eighty thousand ($80,000) dollars and more, to be used for the unlawful purpose aforesaid; that the said W. W. Holden, Governor as aforesaid, under color of his said office, then and there persuaded,

commanded, incited and procured David A. Jenkins, Treasurer of said State to recognize such and said unlawful warrants on the Treasurer of said State, and to deliver such and said sums of money to such agents of the said William W. Holden, governor as aforesaid, as he the said William W. Holden, governor as aforesaid, might from time to time designate and appoint; that in pursuance of such warrants and orders of the said William W. Holden, governor as aforesaid, the said David A. Jenkins, treasurer as aforesaid, delivered to one A. D. Jenkins, called the paymaster, appointed by the said William W. Holden, governor as aforesaid, for such purpose, large sums of money from said treasury, to wit: the month of August, in the year of our Lord one thousand eight hundred and seventy, one Richard M. Allison, a citizen of the county of Iredell, in said State, brought his suit in the superior court of the last named county, in his own behalf, and in behalf of all the tax payers of said State, praying that a writ of injunction might then and there be granted, and issued according to law, restraining the said David A. Jenkins, treasurer as aforesaid, from delivering any sum or sums of money to the said William W. Holden, governor as aforesaid, or any other persons in obedience to such orders and for such purposes, and also restraining the said A. D. Jenkins, as such paymaster, or in any other respect or capacity from disbursing or disposing of said sum of money so in his said hands or any part thereof for the purpose thereof. That the Honorable Anderson Mitchell, judge of said superior court, then and there granted the writ of injunction so prayed for, enjoining and forbidding the said David A. Jenkins, treasurer as aforesaid, from delivering any money from said treasury in obedience to any such warrant or order, so made by the said William W. Holden, governor as aforesaid, and enjoining and forbidding the said A D. Jenkins, as such paymaster or agent, from using or disbursing the said money or any part of it, so in his hands, to or for the use of said armed body of men for any of the purposes aforesaid; that the said David A. Jenkins, treasurer, and the said A. D. Jenkins, were each duly served with said writ of injunction, but nevertheless, the said William W. Holden, governor as aforesaid, wickedly intending to suspend and subvert the laws of said State and to defy and disregard the lawful authority of said court, did afterwards, to wit: after the month last aforesaid, persuade, incite, order, procure and command the said A. D. Jenkins to defy and disregard the said writ of injunction, and to deliver the said money so in his custody to another agent of the said William W. Holden, governor as aforesaid, to be used for the unlawful purposes aforesaid; that the said A. D Jenkins, in obedience to such last mentioned order, command and procurement of the said William W. Holden, governor as aforesaid, and in disregard of such writ of injunction and the lawful authority of said judge, did deliver the said money so in his hands to another agent of the said William W. Holden, governor as aforesaid, to wit: To one Richard T. Berry, to be used for the unlawful purpose aforesaid, and the said William W. Holden, governor as aforesaid, did then and there, in the way and manner, and by the means and for the purpose aforesaid, procure, order and command the said A. D. Jenkins so to disregard and disobey the said writ of injunction and the lawful authority of said judge, and did then and there, and in the way and the manner and by the means and for the unlawful purpose aforesaid, defy, disregard, ignore contravene, suspend and defeat the lawful purpose and effect of the writ of injunction so granted and issued by the said judge; and thereupon and thereafter the said William W. Holden, governor as aforesaid, the said sum of public money thus transferred as aforesaid to

John H. Mathews

the hands of the said Richard T. Berry, did order and cause to be paid out and disbursed by him, the said Richard T. Berry, to, for and about the illegal purposes aforesaid, to wit: The payment of the expenses in keeping on foot, sustaining and maintaining the said illegal military force as aforesaid; whereby the said William W. Holden, governor as aforesaid, was then and there guilty of a high misdemeanor in his said office in violation of his oath of office, and in subversion of the laws of said state, and the peace, interests and dignity thereof.

(Signed:)

JAS. G. SCOTT,
GEO. H. GREGORY,
R. P. WARING,
JOHN W. DUNHAM,
CHAS. W. BROADFOOT,
HENRY A. JORDAN,
LEE M. MCAFEE.

Presented Dec. 19th 1870.

THOS. J. JARVIS,
Speaker of the House of Representatives.

Attest:
W. W. GATHIER, *Clerk.*

Thereupon the president informed the managers and members of the house that the senate would take proper order on the articles of impeachment of which due notice would be given to the house of representatives. The managers and members of the house of representatives then withdrew from the senate chamber.

The president then retired from the chair, after having addressed the senate as follows:

SENATORS: It now becomes my duty, under the constitution and laws of this state, to retire for the time being from the chair as your presiding officer to take charge of another department of the government. Allow me senators, before I retire, to return to you individually and as a body my unfeigned thanks for the courtesy, kindness and consideration which you have always extended to my efforts as your presiding officer. The senate will now proceed to elect a president *pro tempore.*

Mr. Graham offered the following resolution:

Resolved, That a Committee of this Senate be appointed whose duty it shall be forthwith to proceed to the residence of His Honor, Chief Justice Pearson, and respectfully notify him that it is the pleasure of this body, before whom articles

of impeachment have been preferred against the Governor of the State, to organize a court of impeachment on Friday, the 23rd inst.

And the resolution was adopted—yeas 24, nays 18. The president designated Mr. Cowles to constitute the committee to carry out the resolution.

On motion, two copies of the articles of impeachment for each senator were ordered to be printed.

On motion, the articles of impeachment were ordered to be engrossed.

THE TRIAL OF WILLIAM W. HOLDEN,

GOVERNOR OF NORTH CAROLINA,

FOR HIGH CRIMES AND MISDEMEANORS.

THE STATE OF NORTH CAROLINA vs. WILLIAM W. HOLDEN.

THE CAPITOL, December 23, 1870.

The hour of 12 m. having arrived, the Chief Justice, accompanied by Messrs. Jones and Lehman, entered the senate chamber and took his seat as presiding officer.

Upon assuming the chair, the Chief Justice said:

SENATORS: Having been notified by the senator from Yadkin and Surry, I am present to take part in forming a court for the trial of the governor of the state. There is one question which has been called to my attention. I noticed that in the trial of the president of the United States, the chief justice of the United States thought he must take an oath because the constitution of the United States does not make that a part of his official duty. The view that I take of it is that, inasmuch as by the constitution it is made a part of my official duty to take this post, I think the oath I have already taken is enough. Therefore I shall not take another unless senators think it proper. I have consulted with some members and they agree with me in this view. I suppose that it is not necessary for me to mention that I intend, of course, to do my duty impartially and according to law, and that would be the substance of the oath.

The chief justice then ordered a call of the senate, and 36

senators responded to their names, and were duly sworn by the chief justice, viz: Messrs. Adams, Allen, Bellamy, Brogden, Cook, Council, Cowles, Crowell, Currie, Eppes, Flemming, Gilmer, Graham, Hawkins, Hyman, Jones, King, Lassiter, Ledbetter, Lehman, Mauney, McClammy, Merrimon, Moore, Morehead, Murphy, Norment, Olds, Price, Robbins of Davidson, Robbins of Rowan, Skinner, Troy, Warren, Whitesides and Worth.

The chief justice then said: The oath having been administered, I announce that the court of impeachment is organized for business.

On motion of Mr. Graham, it was ordered that the rules adopted by the senate for the government of the impeachment trial be retained for the use of this body until further orders.

On motion of Mr. Graham, it was ordered that the principal clerk of the senate notify the house that the senate is organized for the trial of impeachment of William W. Holden, governor of North Carolina, and are ready to receive the managers of impeachment at its bar, which was accordingly done.

The doorkeeper having made the proclamation provided in the rules adopted by the court, the clerk and doorkeeper were sworn in.

On motion it was ordered that the doorkeeper arrange seats in front of the bar for the accommodation of the managers from the house.

The chief justice stated that the doorkeeper had delivered the message to the house, and the return was that the managers would appear in the senate chamber at 1 o'clock.

On motion of Mr. Robbins, of Rowan, it was ordered that the court take a recess until five minutes to one.

The hour of one having arrived, the committee announced the return of the chief justice.

The doorkeeper announced the arrival of the board of managers from the house. The chief justice invited them forward.

Mr. Sparrow, (chairman of the board of managers,) said:

Mr. Chief Justice, we are requested by the house of representatives as its managers, to demand that the senate take process against William W. Holden, that he may answer at the bar of the senate upon the Articles of Impeachment heretofore preferred by the house of representatives, through its managers before the senate.

On motion of Mr. Lehman, it was ordered that a summons be issued to William W. Holden, governor of the state of North Carolina, to appear and answer the Articles of Impeachment heretofore exhibited against him, and the said summons be made returnable forthwith.

On motion of Mr. Graham, it was ordered that the following form of summons be adopted, to wit:

[See Rules second day.]

The chief justice announced that the doorkeeper had served the summons, and that the governor would appear before the court by counsel.

Mr. R. C. Badger, counsel for the governor, appeared before the bar and read the following reply to the summons, to wit:

Mr. Chief Justice: I, William W. Holden, governor of North Carolina, having been served with a summons to appear before this honorable court, sitting as a Court of Impeachment to answer certain articles of impeachment found and presented against me by the honorable the house of representative of the State of North Carolina, do hereby enter my appearance by my counsel, Richard C. Badger, who has my warrant and authority therefor, and who is instructed by me to ask of this honorable court a reasonable time for the preparation of my answer to said articles. The time has been so short since my impeachment that I have not yet received replies from other members of the bar to whom I have written, requesting them to appear as my counsel in this honorable court. I therefore respectfully ask that they may be hereafter added to the counsel already employed by me. After a careful examanation of the articles of impeachment and consultation with my counsel,

I am satisfied that at least thirty days will be necessary for the preparation of my answer, and I respectfully ask that it be allowed.

(Signed) W. W. HOLDEN.

Richard C. Badger, of counsel for the respondent, moves the court for the allowance of thirty days for the preparation of the answer to the articles of impeachment, and in support of the motion makes the following professional statement:

The articles are eight in number, involving many questions of law and a very great number of facts. They were exhibited in the senate on Monday, the 19th day of December, instant, and their contents only brought to the knowledge of the respondent on the day following, when they appeared in one of the daily nespapers published in the city of Raleigh.

The respondent, on account of the shortness of time, has not yet had replies from the other counsel to whom he has applied to appear for him jointly with myself, and this season of the year at which, according to the customs of this country, all persons make their arrangements for the incoming year, will cause the loss of at least seven of the days asked for.

(Signed) R. C. BADGER,
Counsel for the Respondent.

Chief Justice: The managers have heard the motion; what disposition will they make of it?

Mr. Sparrow said it was the desire of the managers that the respondent should have full time to prepare his reply to the charges presented against him, and he was instructed to say the time asked for would be agreeable to the Board of Managers.

The Chief Justice said that if no objection was made by the court, the motion would be considered granted.

Objection was made.

Mr. Sparrow said the Board of Managers desired to know if the respondent would ask for a longer time after the expiration of the thirty days asked.

Mr. Badger assured the Court that the governor would throw no obstacle in the way to delay the trial, but simply desired the time necessary to complete his reply.

On motion of Mr. Graham, it was ordered that the respondent file his answer to the Articles of Impeachment on or before the 23d day of January, 1871, and that the managers of impeachment file their replication thereto within six days thereafter, and that the matter stand for trial on the 30th day of January, 1871.

The Chief Justice gave notice that the court would stand adjourned until the 23d of January.

SECOND DAY.

SENATE CHAMBER, January 23d, 1871.

At 12 m., pursuant to adjournment, the Chief Justice having taken the chair, the senate proceeded to the consideration of the articles of impeachment exhibited against William W. Holden, governor of North Carolina. Proclamation was made in due form by the doorkeeper.

The following senators were then duly qualified by the chief justice, to wit: Messrs. Albright, Barnett, Battle, Beasley, Brown, Dargan, Flythe, Graham of Alamance, Latham, Linney, Love, Speed and Waddell.

On motion of Mr. Graham, of Orange, it was ordered that the additional rules for the government of the impeachment trial heretofore adopted by the senate, be the rules of this body until further orders. The rules are as follows:

RULE I. Before proceeding to the consideration of the Articles of Impeachment, the presiding officer shall administer to the members of the Senate then present and to the other members as they shall appear, the following oath: "I ——, swear truly and impartially to try and determine the charges in the Articles of Impeachment exhibited against William W. Holden, Governor of the State of North Carolina, under the Constitution and laws thereof according to the evidence: So help me God"

RULE II. The Principal Clerk of the Senate shall act as Clerk of the Court of Impeachment, and shall record the proceedings of the court in the same manner as the legislative proceedings of the Senate.

RULE III. The Doorkeeper of the Senate shall execute all orders of the presiding officer and the Senate, and he may employ such assistance as may be necessary for that purpose.

RULE IV. Counsel for the parties shall be admitted to appear and be heard upon an impeachment.

RULE V. Before proceeding to the trial on each day the following proclamation shall be made by the Doorkeeper of the Senate: O yes, O yes, O yes all persons are commanded to keep silence on pain of imprisonment, while the Senate of North Carolina is sitting for the trial of Articles of Impeachment against William W. Holden, Governor of North Carolina.

RULE. VI. That the following form of summons be adopted, to-wit:

THE STATE OF NORTH CAROLINA.

The Senate of North Carolina,
to William W. Holden, Greeting;

WHEREAS, The House of Representatives of the State of North Carolina, did, on the 20th day of December, 1870, exhibit to the Senate Articles of Impeachment against you, the said William W. Holden, which said articles, appended to this summons, demand that you, the said William W Holden, should be put to answer the accusations as set forth in said articles. And that such proceedings, examinations, trials and judgments might be thereupon had as are agreeable to law and justice, you, the said William W. Holden, are therefore hereby summoned to appear forthwith before the Senate of North Carolina, at their chamber in the city of Raleigh, then and there to answer to the said Articles of Impeachment, and there to abide by, obey and perform such orders, directions and judgments as the Senate of North Carolina shall make in the premises, according to the Constitution and laws of North Carolina. Hereof you are not to fail. Witness, R. M. Pearson, Chief Justice and presiding officer of the said Senate, at the city of Raleigh, this 23rd day of December, 1870,

(Signed,) R. M. PEARSON,
Chief Justice S. C.

(PRECEPT.)

THE STATE OF NORTH CAROLINA.

The Senate of North Carolina,
To Joseph J. Roberson, Greeting;

You are hereby commanded to deliver and leave with William W. Holden, a true and attested copy of the within writ of summons and of the Articles of Impeachment thereto appended, together with a like copy of this precept, and let it be done forthwith.

Fail not, and make return of this writ of summons and precept, with your proceedings thereon endorsed, on the appearance day mentioned in said writ of summons.

Witness, R. M. Pearson, Chief Justice and presiding officer of the Senate, at the city of Raleigh, this 23d day of December, 1870.

(Signed,) R. M. PEARSON,
Chief Justice S. C.

(RETURN.)

The foregoing writ of summons has been duly served upon William W. Holden, Governor of the State of North Carolina, by delivering to him a copy of the summons and of the Articles of Impeachment thereto appended and of this precept, the 23d day of December, 1870.

(Signed,) J. J. ROBERSON,
Doorkeeper and Sergeant-at-Arms.

RULE VII. The hour of the day at which the Senate shall sit upon the trial of

an impeachment shall be 12 o'clock, M., and when the hour for such sitting shall arrive, the presiding officer of the Senate shall so announce; and thereupon the presiding officer upon such trial shall cause proclamation to be made, and the business of the trial shall proceed until 3 o'clock and thirty minutes, P. M., unless upon a motion, seconded by one-fifth of the members present, the court shall determine to adjourn earlier or sit longer. The adjournment of the Senate sitting in said trial shall not operate as an adjournment of the Senate; but on such adjournment the Senate shall resume the consideration of its legislative business.

RULE VIII. All motions made by the parties or their counsel shall be addressed to the presiding officer, and if he or any Senator shall require it, they shall be committed to writing and read at the Clerk's desk.

RULE IX. The Reading Clerk of the Senate shall read all papers which may be sent to the clerk's desk, and act as the deputy of the Principal Clerk, and assist in the performance of the duties prescribed for that officer.

RULE X. Witnesses shall be examined by one person on behalf of the party introducing them, and then cross-examined by one person on the other side.

RULE XI. If a Senator is called as a witness he shall be sworn, and give his testimony standing in his place.

RULE XII. If a Senator wishes a question to be put to a witness, or to offer a motion or order, (except a motion to adjourn) it shall be reduced to writing, and put by the presiding officer.

RULE XIII. All preliminary or interlocutory questions, and all motions shall be argued for not exceeding one-half hour on each side, unless the Senate shall, by order, extend the time.

RULE XIV. The case on each side shall be opened by one person. The final argument on the merits may be made by two persons on each side, (unless otherwise ordered by the Senate upon application for that purpose,) and the argument shall be opened and closed upon the part of the House of Representatives.

RULE XV. If the Senate shall at any time fail to sit for the consideration of the Articles of Impeachment on the day or hour fixed therefor, the Senate may, by an order to be adopted without debate, fix a day and hour for resuming such consideration.

RULE XVI. Witnesses shall be sworn in the following form: "You solemnly swear that the evidence you shall give in the case now depending between the State of North Carolina and William W. Holden, shall be the truth, the whole truth, and nothing but the truth; So help you God;" which oath shall be administered by the Clerk of the Senate or other authorized person.

RULE XVII The following shall be the form of subpœna which shall be issued upon the application of either of the parties or their counsel:

The Senate of North Carolina,

To Joseph J. Roberson, Greeting;

You are hereby commanded to summon ——— to appear before the Senate of North Carolina on the —— day of ———, 1871, at the Senate Chamber in the city of Raleigh, then and there to testify his knowledge in the cause which is before the Senate, and in which the House of Representatives have impeached William W. Holden.

Fail not, and make due return of the service of this subpœna.

WITNESS, William L. Saunders, Clerk of the Senate, at Raleigh, this —— day of ——, 1871.

——————, *Clerk of the Senate.*

RULE XVIII. All the orders and decisions shall be made and had by yeas and nays upon the demand of one-fifth of the members present and without debate, except upon a vote of a majority of the members present allowing discussion, and in that case no member shall speak more than once on one question, and not more than five minutes upon an interlocutory question, and not more than ten minutes on the final question, unless by consent of the Senate to be had without debate; but each Senator shall be permitted to file, within two days after the vote shall have been taken upon the Articles of Impeachment, his written opinion, to be printed with the proceedings.

RULE XIX. In taking the votes of the Senate upon the Articles of Impeachment, the clerk will read the several articles successively, and after the reading of each article the Clerk will call the name of each Senator, who shall rise in his place and thereupon the presiding officer put the following question: "Mr. —— how say you, is the respondent, William W. Holden, guilty or not guilty as charged in —— Article of Impeachment; whereupon each Senator shall answer "guilty" or "not guilty."

RULE XX. If the impeachment shall not, upon any of the article presented, be sustained by the votes of two-thirds of the members present, a judgment of acquittal shall be entered; but if the person accused in such Articles of Impeachment shall be convicted upon any of said articles by the votes of two-thirds of the members present, the Senate shall proceed to pronounce judgment, and a certified copy of such judgment shall be deposited in the office of the Secretary of State.

On motion of Mr. Graham, of Orange, it was ordered that the principal clerk of the senate notify the managers on the part of the house of representatives, that the senate is ready to proceed with the trial of William W. Holden, governor of North Carolina, and that seats are provided for the managers and counsel.

Mr. Sparrow, on behalf of the managers, announced that Messrs. William A. Graham, Thomas Bragg and A. S. Merrimon were associated with the managers as counsel.

Mr. Badger, in behalf of the respondent, announced that Messrs. J. M. McCorkle, Nathaniel Boyden, William N. H. Smith and Edward Conigland were associated with himself as counsel for respondent.

On motion of Mr. Graham, of Orange, it was ordered that the doorkeeper inform the respondent, William W. Holden, and

his counsel, that the senate is ready to proceed with the trial of the impeachment.

The answer of the respondent, William W. Holden, governor of North Carolina, to the articles of impeachment exhibited against him was then read, as follows:

THE ANSWER of the said William W. Holden, governor of the State of North Carolina, to the articles of Impeachment exhibited against him by the House of Representatives of the State of North Carolina.

For answer to the first article he says: That this respondent on the 4th day of July, 1868, was inaugurated governor of the State of North Carolina, and entered upon the discharge of his duties with the purpose to administer the government of said state in strict accordance with the obligation of his oath of office, without favor or affection, agreeable to the constitution and laws of the state, a purpose which he has not intentionally violated in any of his official acts. On the first day of July, A. D. 1868, Jonathan Worth, the immediate predecessor of this respondent in the gubernatorial office, addressed to him a protest, of which the following is a copy:

STATE OF NORTH CAROLINA,
EXECUTIVE DEPARTMENT,
Raleigh, July 1, 1868.

Governor W. W. HOLDEN, *Raleigh, N. C.:*

SIR: Yesterday morning I was verbally notified by Chief Justice Pearson that in obedience to a telegram from General Canby, he would to day at 10 a. m. administer to you the oath required preliminary to your entering upon the discharge of the duties of civil Governor of the State, and that thereupon you would demand possession of my office. I intimated to the Judge my opinion that such proceeding was premature, even under the reconstruction legislation of Congress, and that I should probably decline to surrender the office to you.

At sundown yesterday evening I received from Colonel Williams, commandant of this military post, an extract from the general orders, No. 120, of General Canby, as follows:

GENERAL ORDERS, NO. 120.

[EXTRACT.]

"HEADQUARTERS, SECOND MILITARY DISTRICT,
Charleston, S. C., June 30, 1868.

"To facilitate the organization of the new state governments, the following appointments are made: To be Governor of North Carolina, W. W. Holden, Governor elect, vice Jonathan Worth, removed; to be lieutenant governor of North

Carolina, Tod R. Caldwell, lieutenant governor elect, to fill an original vacancy, to take effect July 1, 1868, on the meeting of the General Assembly of North Carolina."

I do not recognize the validity of the late election, under which you and those co-operating with you, claim to be invested with the civil government of the State. You have no evidence of your election save the certificate of a major-general of the United States army. I regard all you as, in effect, appointees of the military power of the United States and not as "deriving your powers from the consent of those you claim to govern." Knowing, however, that you are backed by military force here, which I could not resist if I would, I do not deem it necessary to offer a futile opposition, but vacate the office without the ceremony of actual eviction, offering no further opposition than this, my protest. I would submit to actual expulsion, in order to bring before the Supreme Court of the United States the question as to the constitutionality of the legislation under which you claim to be the rightful Governor of the State, if the past action of that tribunal furnished any hope of a speedy trial. I surrender the office to you under what I deemed military duress, without stopping, as the occasion would well justify, to comment upon the singular coincidence that the present State Government is surrendered, as without legality, to him whose own official sanction, but three years ago, declared it valid.

I am, very respectfully,

JONATHAN WORTH,
Governor of North Carolina.

But this respondent was disposed to ascribe this protest against the constitutionality of the legislation under which he had been elected, to causes operating solely upon him by whom it had been offered, and cherished the hope that it was not concurred in by any considerable body of his fellow-citizens, but that they had resolved to submit, in good faith, to the reconstruction acts of Congress, and to aid him in giving effect to the same. The protest aforesaid was taken up by various newspapers throughout the State, the sentiments therein expressed were lauded and endorsed, and unmistakable evidence given that the government of the State was regarded by many as illegal in its character, and was submitted to only because of inability to overthrow it. Not long after the induction of this respondent to office, he became officially cognizant of a settled design, existing in various parts of the State, through the aid of secret combinations of a political character, of which he believes the aforesaid protest was the nucleus, practically to render null and void said reconstruction acts, and to set at naught those provisions of the Federal and State constitutions which secure political and civil equality to the whole body of the people, without respect to race, color or previous condition. Determined to avert, if possible, the evil consequences which, it was foreseen must ensue from the attempt of such combinations to effect the objects for which they had been organized, especially the purpose to assail by force the right of suffrage guaranteed by said acts to his colored fellow-citizens, this respondent deemed it his duty to issue his proclamation of Oct. 12th, 1868, setting forth the nature of the government, giving warning of the consequences that must follow any attempt to subvert the same, and enjoining all magistrates, sheriffs, and other peace officers to be vigilant, impartial, faithful and firm in the discharge of their

duties, explaining and enforcing the law, ferreting out offenders, protecting the weak against the strong who may attempt to deprive them of their rights, to the end that the wicked may be restrained, the peace of society preserved, the good name of the State maintained, and the government perpetuated on the basis of freedom and justice to all.

But the said combinations continued to gather strength. The members thereof met in secret, selected the victims to be punished, and perpetrated outrages in the dead of night, through disguised parties, on quiet and unoffending citizens, chiefly colored persons, and always of the Republican party. The Legislature, under the hope of placing some check upon their unlawful acts, and of affording some security to the objects of their vengeance, passed the act of April 12th, 1869, entitled "An Act making the act of going masked, disguised or painted a felony," which this respondent set forth in his proclamation of April 16th, 1869, of which the following is a copy:

A PROCLAMATION BY HIS EXCELLENCY, THE GOVERNOR OF NORTH CAROLINA.

EXECUTIVE DEPARTMENT,
Raleigh, April 16, 1869.

It is my duty to publish the following act, passed by the General Assembly of North Carolina at its recent session:

AN ACT MAKING THE ACT OF GOING MASKED, DISGUISED OR PAINTED A FELONY.

SECTION I. *The General Assembly of North Carolina do enact*, Any person who shall disguise himself by painting his face, or by wearing any mask or any other device for the concealment of the face or person, with intent to terrify or frighten any citizen of the community, or part thereof, shall be deemed guilty of a misdemeanor, and be punished by fine or imprisonment in the county jail, at the discretion of the court.

SEC. 2. Any person or persons, either singly or in association with each other, who, being disguised or masked, or otherwise concealed in the manner described in the preceding section, shall commit any trespass or act by force or violence, which is now a misdemeanor by any statute of this State, or at common law, shall be deemed guilty of a felony, and shall be imprisoned at hard labor in the penitentiary for a term of not less than one year, or more than ten years.

SEC. 3. This act shall go into effect on its ratification, and the Governor shall cause the same to be published immediately.

Ratified the 12th day of April, A. D. 1869.

No person in this State can be "in any manner deprived of his life, liberty or property but by the law of the land." Every man's house is his castle, into which no man can enter to molest or disturb him unless by authority of law. The humblest and the poorest are entitled to this protection equally with the wealthiest and most exalted. The courts will extend this protection, and the Executive is prepared to sustain the courts, and to do everything within the sphere of his powers and duties to preserve peace and good order in society. Bands of men who go masked and armed at night, causing alarm and terror in neighborhoods, and committing acts of violence on the inoffensive and defenceless, will be fol-

lowed and brought to justice; and depredators and robbers, who live on the honest earnings of others, will be made to feel the penalty due to their crimes.

It is hoped the evils complained of, and which are confined to a few localities, will speedily cease. The great body of the people of the State are submitting quietly and peaceably to established authority, and laboring assiduously to retrieve their fortunes and improve their condition. I appeal to this great body of the people to unite with me in discountenancing and repressing the evils referred to. Public opinion properly embodied and expressed will be more effectual in repressing these evils and in promoting the general good that will result from the complete establishment of peace and order in every neighborhood in the State, than the execution of the law itself against offenders in a few individual cases. I respectfully and earnestly invoke this public opinion. By the regard which we all have for the peace of society and the good name of the State, I call upon every citizen to unite with me in discountenancing disorders and violence of all kinds, and in fostering and promoting confidence, peace and good will among the whole people of the State

§ L. S. § Done at our City of Raleigh, this the 16th day of April, one thousand eight hundred and sixty-nine, and in the year of the Independence of the United States the ninety-third.

W. W. HOLDEN, *Governor.*

By the Governor:

W. R. RICHARDSON, *Acting Private Secretary.*

For a more detailed statement of the purposes and objects of the said secret political combinations, and of the means which they adopted to effect said purposes and objects, and of the outrages which they perpetrated, this respondent refers to his message of November 22d, 1870, to the Honorable the General Assembly of North Carolina, and quotes therefrom as follows:

"These combinations were at first purely political in their character, and many good citizens were induced to join them. But gradually, under the leadership of ambitious and discontented politicians, and under the pretext that society needed to be regulated by some authority outside or above the law, their character was changed, and these secret Klans began to commit murder, to rob, whip, scourge and mutilate unoffending citizens. These organizations, or these combinations were called the Kuklux Klan, and were revealed to the public, as the result of the measures which I adopted, as '*The Constitutional Union Guards.*' '*The White Brotherhood,*' and '*The Invisible Empire.*' Unlike other secret political associations, they authorized the use of force, with deadly weapons, to influence the elections. The members were united by oaths which ignored or repudiated the ordinary oaths or obligations resting upon all other citizens to respect the laws and uphold the government; these oaths inculcated hatred by the white race against the colored race; the members of the Klan, as above stated, were hostile to the principles on which the government of the State had been reconstructed, and, in many respects, hostile to the government of the United States. They met in secret, in disguise, in arms, in a dress of a certain kind intended to conceal their persons and their horses, and to terrify those whom they menaced or assaulted. They held their camps, and under their leaders they decreed judgment against their peaceable fellow-citizens, from mere intimidation to scourgings, mutilations, the burning of churches, school-houses, mills, and in many cases to murder. This

organization, under different names, but cemented by a common purpose, is believed to have embraced not less than forty thousand voters in North Carolina. It was governed by rules more or less military in their character, and struck its victims with such secrecy, swiftness and certainty as to leave them little hope either for escape or mercy. The members were sworn to obey the orders of their camps even to assassination and murder. They were taught to regard oaths administered before magistrates and in courts of justice, as in no degree binding when they were called upon to give testimony against their confederates. They were sworn to keep the secrets of the order—to obey the commands of the chief—to go to the rescue of a member at all hazzards, and to swear for him as a witness, and acquit him as a juror. Consequently, grand juries in many counties frequently refused to find bills against the members of the Klan for the gravest and most flagrant violations of law; and when bills were found, and the parties were arraigned for trial, witnesses, members of the order, would in nearly every case come forward, and, taking an oath before the Court on the Holy Evangelists to tell the truth, the whole truth, and nothing but the truth, would swear falsely, and would thus defeat the ends of justice. There are, at least, four judges and four solicitors in the State who will bear witness to the fact, from their own experience, that it was very difficult, if not impossible, to convict members of this Klan of crimes and misdemeanors. I have information of not less than twenty five murders committed by members of this Klan, in various counties of the State, and of hundreds of cases of scourging and whipping. Very few, if any, convictions have followed in these cases. The civil law was powerless. One State Senator was murdered in the open day in a county court-house, and another State Senator was driven from the State, solely on account of their political opinions. In neither case was a bill found by a grand jury. A respectable and unoffending colored man was taken from his bed at night, and hanged by the neck until he was dead, within a short distance of a county court-house. Another colored man was drowned because he spoke publicly of persons who aided in the commission of this crime. No bills were found in these cases. A crippled white man, a native of Vermont, was cruelly whipped because he was teaching a colored school. No bill was found in this case. The sheriff of a county was waylaid, shot and killed on a public highway, and the colonel of a county was shot and killed in the open day, while engaged in his usual business. A county jail was broken open and five men taken out and their throats cut. Another jail was broken open, and men taken out and shot, one of whom died of his wound. Another jail was broken open, and a United State's prisoner released. No punishments followed in these cases. The members of this Klan, under the orders of their chiefs, had ridden through many neighborhoods at night, and had punished free citizens on account of their political opinions, and had so terrified many of them by threats of future visitations of vengeance that they fled from their houses, took refuge in the woods and did not dare to appear in public to exercise their right of suffrage. Some of these victims were shot, some of them were whipped, some of them were hanged, some of them were drowned, some of them were tortured, some had their mouths lacerated with gags, one of them had his ear cropped, and others, of both sexes, were subjected to indignities which were disgraceful not merely to civilization but to humanity itself. The members of this Klan, under the orders of their chiefs, had ridden, defiantly and unmolested, through the towns of Hillsborough, Chapel Hill, Pittsborough and Graham, committing crimes, defying the lawful authorities, and caus-

ing real alarm to all good people. In fine, gentlemen, there was no remedy for these evils through the civil law, and but for the use of the military arm, to which I was compelled to resort, the whole fabric of society in the State would have been undermined and destroyed, and a reign of lawlessness and anarchy would have been established. The present State government would thus have failed in the great purpose for which it was created, to wit: the protection of life and property under equal laws; and necessarily the national government would have interfered, and, in all probability, would have placed us again and for an indefinite period under military rule."

Which he desires to be taken as a part of this answer, and all of which he is prepared to sustain by proof.

This respondent, actuated by a sincere desire to restore the good order of society in the State, and determined to use all peaceful ways and means to bring back those misguided men to a sense of their duty to their fellow-citizens, and to cause them to abandon the said organizations, issued, on the 20th day of October, 1869, his proclamation, of which the following is a copy:

"A PROCLAMATION BY HIS EXCELLENCY, THE GOVERNOR OF NORTH CAROLINA.

EXECUTIVE DEPARTMENT,
Raleigh, October 20th, 1869.

"Notwithstanding the existence of peace and good order in other portions of the State, I regard it as my duty to announce that in four counties, to wit: Lenoir, Jones, Orange and Chatham there is, and has been for some months past, a feeling of insubordination and insurrection, insomuch that many good citizens are put in terror for their lives and property; and it is difficult, if not impossible, to secure a full and fair enforcement of the law. Information has reached, and continues to reach the Executive, that in the above counties a state of feeling exists which is totally incompatible with the free exercise, by the friends of the government, of that independent expression of opinion and that freedom of action which is the birthright of every American. In Lenoir and Jones various thefts and murders have been committed; jails have been forcibly opened and the prisoners taken thence have been murdered; an officer of the law has been waylaid and slain on the public highway, and another officer of the law has been slain in open day while engaged in his ordinary avocations. Private dwellings have been entered and the occupants terrified, and some of them whipped or murdered: others have been shot or cruelly beaten; and the result is that thus far the civil law, though firmly asserted and maintained, has not been adequate to bring the insubordinate and the wicked to condign punishment. In Chatham the jail has been forcibly opened and a prisoner, confined under sentence of a Court of the United States, has been liberated and is now at large. In Orange the jail has been forcibly opened and two prisoners (colored men) taken out and shot, one of whom has died of his wounds. Three other colored men have been hanged until they were dead, one has been cruelly mutilated, and others have been whipped. White citizens have been injured, insulted and terrified. The University of the State, sacred to the cause of learning, has been repeatedly invaded by

hands of armed men in disguise on horseback, and acts of violence have been there perpetrated on unoffending citizens and officers of the law. Many of the colored people in these counties, and no inconsiderable portion of the white people, though obedient to the law and good citizens, are living under constant apprehensions that they may fall victims at any moment to the malice of their enemies.

"It is made my duty under the constitution "to call out the militia to execute the law, suppress riots or insurrection and to repel invasion." I deeply regret that it seems necessary to resort to the military power to enforce the law and to protect the citizen. But the law must be maintained. I have waited in vain, hoping that a returning sense of reason and justice would arrest these violations of the law. But these evils, instead of diminishing have increased, and no course is left to me but to issue this proclamation of admonition and warning to all the people of the counties mentioned, whether engaged in these flagrant violations of law, or whether indifferent or insensible to what is occurring in their midst. I now call upon every citizen in the counties aforesaid to aid the civil power in a fearless enforcement of the laws. No set of men can take the law into their own hands. Every citizen, however humble, or whatever his color, has a right to be at peace in his own house, and cannot be taken thence except by due process, and cannot be punished save by the law. If there be those who counsel resistance to established authority, such persons are traitors and should be punished accordingly; if there be those who, disguised or masked, enter the dwellings of others by force and commit acts of violence, such persons are guilty of felony, and should be punished by hard labor in the penitentiary; if there be those who, without precept or order, hang or shoot, or otherwise deprive any one of life, such persons are murderers, and should be punished accordingly.

"I now give notice in the most solemn manner that these violations of law and these outrages in the aforesaid Counties *must cease;* otherwise, I will proclaim those counties in a state of insurrection, and will exert the whole power of the State to enforce the law, to protect those who are assailed or injured, and to bring criminals to justice. In a matter like this there should be no party feeling. It is my fixed purpose to protect every citizen without regard to his antecedents, his color or his political opinions; but to do this the law must be sacred, must be spread over all alike, and must be inflexibly maintained.

{ L. S. } "Done at our City of Raleigh, this the 20th day of October, in the year of our Lord, one thousand eight hundred and sixty-nine, and in the ninety-fourth year of our Independence.

W. W. HOLDEN, *Governor.*

By the Governor:

W. R. RICHARDSON, *Private Secretary.*

The said organizations extended into the counties of Alamance and Caswell, with, if possible, redoubled atrocity in the means to which their members resorted to carry out their illegal objects, when the Legislature, moved by the fearful disorders which had so alarmingly increased in these and other counties, passed the act of January 29th, 1870, entitled "An act to secure the better protection of life and property," which authorizes and empowers the Governor "whenever in his judgment the civil authorities in any county are unable to protect its citizens in the enjoyment of life and property, to declare such county to be in a state of

insurrection, and to call into active service the militia of the State to such an extent as may become necessary to suppress such insurrection; and in such case the Governor is further authorized to call upon the President for such assistance, if any, as in his judgment may be necessary to enforce the law."

Within a few days after the ratification of the said act, a band of armed men, to the number of fifty or more, members of the aforesaid organization, disguised by masks and other means, intending to awe members of the republican party throughout the State, by putting to death certain republican citizens of Alamance county, did, on the night of the 26th of February, 1870, enter the town of Graham, the shire town of the said county of Alamance, with the purpose and intent of putting to death every adult republican male resident of the said town of Graham, and, did, with such purpose and intent, visit the houses of all such residents, and did drag from his bed and put to death by hanging, in the public square of said town, one Wyatt Outlaw, an old colored man, whose only offence was that he belonged to the said Republican party. But for the fact that the other adult male republican residents of said town succeeded in making their escape, it is believed that they would have shared the same fate.

This respondent, notwithstanding the aforesaid atrocities so subversive of the good order of society, was reluctant to have recourse to the extraordinary means provided by the Constitution of the State and the aforesaid act of January 27th, 1870, in order to repress the same, but still hoped that he could effect the said object by means of the civil power alone. In addition to the proclamations already herein set forth, he addressed letters to various civil and military officers and citizens of the State, urging the necessity of repressing the said outrages, and of enforcing the law. In the early part of 1870, he enlisted in Chatham county, the services of Captain N. A. Ramsay, and in Orange county, of Captain Pride Jones, both belonging to the political party opposed to him, to aid in composing the troubles in those counties.

The number of the order in Alamance county, as stated by a credible witness under oath, was between 700 or 800; in Guilford county 1200; the number in Caswell county was not stated, but the order extended over the State and numbered 40,000 members. Many citizens of Alamance and Caswell counties had been scourged, whipped, mutilated and murdered, with impunity, the civil law had become a by-word and a reproach, and it having become evident, in the judgment of this respondent that the civil authorities of the county of Alamance were unable to protect the citizens thereof in the enjoyment of life and property, this respondent deemed it his imperative duty, to exercise the powers vested in him by the Constitution and laws of the State, and on the 7th day of March, 1870, issued his proclamation as Governor of North Carolina, declaring the county of Alamance in a state of insurrection, of which the following is a copy:

"A PROCLAMATION BY HIS EXCELLENCY, THE GOVERNOR OF NORTH CAROLINA.

EXECUTIVE DEPARTMENT,
Raleigh, March 7th, 1870.

"By virtue of authority vested in me by the Constitution of the State, and by virtue of an act passed at the present session of the General Assembly, entitled

"An act to secure the better protection of life and property," ratified the 29th day of January, 1870, and for the reason that the civil authorities of the county of Alamance are not able to protect the citizens of said county in the enjoyment of life and property, I hereby proclaim and declare that the county of Alamance is in a state of insurrection.

"On the 26th day of November, 1869, a citizen of the United States, who was engaged in teaching school in said county, was taken from his house by a band of men armed and disguised, and was by them cruelly beaten and scourged.

"On the night of the 26th of February, 1870, a citizen of said county was taken from his house by a band of men armed and disguised, and was by them hanged by the neck until he was dead, on the public square in the town of Graham, near the court house.

"And more recently the postmaster at Company Shops, in said county, an officer of the government of the United States, was compelled to flee the county, and while absent a band of men armed and disguised visited his house, with the purpose, doubtless, of taking his life; and this within a short distance of Federal troops stationed in said county, not to overawe or intimidate good citizens, but to preserve the peace and to protect the innocent and law-abiding.

"In addition to these cases information has been received at this department that peaceable and law-abiding citizens of the county aforesaid have been molested in their houses, have been whipped, shot, scourged and threatened with further visitations of violence and outrage unless they would conform to some arbitrary standard of conduct set up by these disguised assassins and murderers.

"I have issued proclamation after proclamation to the people of the State, warning offenders and wicked or misguided violators of the law to cease their evil deeds, and, by leading better lives, propitiate those whose duty it is to enforce the law. I have invoked public opinion to aid me in repressing these outrages and preserving peace and order. I have waited to see if the people of Alamance would assemble in public meeting and express their condemnation of such conduct by a portion of the citizens of the county, but I have waited in vain. No meeting of the kind has been held. No expression of disapproval even of such conduct by the great body of the citizens has reached this department; but, on the contrary, it is believed that the lives of citizens who have reported these crimes to the Executive have been thereby endangered, and it is further believed that many of the citizens of the county are so terrified that they dare not complain, or attempt the arrest of criminals in their midst. The civil officers of the county are silent and powerless.

"The laws must be maintained. These laws are over all. Every citizen of whatever party or color must be absolutely free to express his political opinions and must be safe in his own house. These outrages and these violations of law must and SHALL cease. Criminals must and shall be brought to justice. The whole power of both governments, State and Federal, is pledged to this, and this power will be exerted. Criminals who may escape to counties adjoining Alamance will be pursued, and if not delivered up by the civil authorities of said counties, or if sheltered or protected in said counties with the knowledge of the civil authorities, the said counties will also be declared to be in a state of insurrection.

"I earnestly appeal to all good citizens to aid the civil authorities in maintain-

ing peace and good order, and to support me in my purpose to protect life and property without regard to party or color.

"Done at the city of Raleigh, this 7th day of March, 1870, and in the 94th year of our Independence.

W. W. HOLDEN, *Governor.*

By the Governor:

W. R. RICHARDSON, *Private Secretary.*

And which he prays may be taken as a part of this his answer.

Undeterred by the proceedings taken for the protection of society in the county of Alamance, the aforesaid organizations continued to perpetrate outrages in the county of Caswell, reference to some of which is made in a proclamation of this respondent of July 6, 1870, of which the following is a copy:

"A PROCLAMATION BY HIS EXCELLENCY, THE GOVERNOR OF NORTH CAROLINA.

EXECUTIVE DEPARTMENT,
Raleigh, June 6th, 1870.

"WHEREAS, In January or February, 1869, the house of Daniel Blue, colored, in the county of Moore, was entered at night by a band of disguised men, known as the Kuklux klan, and the wife of the said Blue, who was pregnant, and five of the children, were murdered, and the house with the bodies of the murderd persons aforesaid was burned; and

"Whereas, on the 26th of February, 1870, Wyatt Outlaw, colored, a citizen of Alamance, was taken from his house in the town of Graham by disguised persons known as the Kuklux, and hanged by the neck until he was dead, on a tree near the Court house; and

"Whereas, on the 21st day of May, 1870, John W. Stevens, white, State Senator from the county of Caswell, was murdered in open day-light in the court house in the village of Yanceyville, by persons unknown, supposed to belong to the Kuklux klan aforesaid; and

"Whereas, on the 13th of May, 1870, Robin Jacobs, colored, living near Leasburg, Caswell county, was murdered at night by a band of Kuklux klan aforesaid; and

"Whereas, from the 2d of April, 1870, to the 15th of May, 1870, not less than twenty-one persons, white and colored, in the aforesaid county of Caswell, were cruelly whipped and scourged by a band or bands of the aforesaid Kuklux klan; and

"Whereas, during the week ending the 14th of May, 1870, a colored man in the county of Lincoln, was taken from his bed at night and tied to a tree by a band of disguised persons known as the Kuklux klan and cruelly whipped; and

"Whereas, about the same time, in said county, a band of men disguised, known as the Kuklux klan, in said county, shot a colored man on the public highway, and then told him they had shot him through mistake for another colored man, but laid him on a pile of fence rails and told him to cry for help; and

"Whereas, a colored man named Puryear, of the county of Alamance, supposed to be half-witted, having followed two of the disguised murderers of Wyatt

Outlaw to their homes, and having spoken of the fact publicly, suddenly disappeared, and was found drowned in a mill pond with a twenty-pound rock to his feet; and

"Whereas, T. M. Shoffner, one of the Senators in the General Assembly of this State from the counties of Alamance and Guilford, has been compelled to sacrifice his property, and, to save his life, to make his escape from said county on account of his opposition to the Kuklux klan aforesaid, and his devotion to the government of the United States; and

"Whereas, on the 26th of May, 1870, a most atrocious murder was committed by three disguised men on Neill McLeod and Daniel McLeod, white, of the county of Cumberland, and three others of the family were wounded by these assassins; and

"Whereas, in divers other localities, peaceable citizens have been insulted in their homes, put in fear of their lives, whipped, scourged, maltreated, mutilated and murdered by persons disguised and known as the Kuklux klan; and

"Whereas, retaliation has commenced by the burning of barns, stables and mills; and

"Whereas, all these evils are to be traced to the Kuklux klan aforesaid, though no apology can be offered for the retaliation referred to, for it is equally to be deplored and reprobated as a wicked violation of the law; and upon due information laid before me, (which information has not been furnished,) that barns, or stables, or mills, or dwelling houses, have been burned by incendiaries, mentioning localities and the persons to whom the said barns, or stables, or mills, or dwelling houses belonged, rewards will also be offered for the arrest and conviction of the incendiaries aforesaid.

"Now, therefore, I, WILLIAM W. HOLDEN, Governor of the State of North Carolina, do issue this my proclamation, offering a reward of FIVE HUNDRED DOLLARS for the arrest of each of the murderers of the wife and children of Daniel Blue, of each of the murderers of Wyatt Outlaw, of each of the murderers of John W. Stevens, of each of the murders of Robin Jacobs, of each of the persons who murdered Purycar, and of each of the persons who murdered Neill McLeod and Daniel McLeod, and robbed the family of the said Neill McLeod, together with such evidence as will lead to the conviction of the persons thus arrested; those who planned, advised or counselled the commission of this act; those who participated in the act or acts; or those who conspired to conceal the bodies of the murdered, or aided in the concealment and escape of the felons.

And I enjoin upon all officers, civil and military, to aid in bringing these and all other offenders to justice; and especially to discountenance, discourage and repress all organizations of men who ride or walk at night in disguise, with arms in their hands. It is a misdemeanor thus to go disguised, and it is felony if these disguised persons molest or injure peaceable citizens in their life and property.

L. S. Done at our city of Raleigh, this sixth day of June, in the year of our Lord one thousand eight hundred and seventy, and in the ninety-fourth year of our Independence.

W. W. HOLDEN, *Governor.*

By the Governor:

W. R. RICHARDSON, *Private Secretary.*

And which he prays to be taken as a part of this his answer. But the hope of pe-

cuniary reward, and the fear of punishment proved alike unavailing. Actuated by the same imperative sense of duty by which he was impelled in the case of the county of Alamance, and it having become evident to his judgment, that the authorities of the county of Caswell were unable to protect the citizens thereof in the enjoyment of life and property, this respondent, in the exercise of the powers vested in him by law, on the 8th day of July, 1870, issued his proclamation, as Governor of North Carolina, declaring the county of Caswell in a state of insurrection, of which the following is a copy:

A PROCLAMATION BY HIS EXCELLENCY, THE GOVERNOR OF NORTH CAROLINA.

EXECUTIVE DEPARTMENT,
Raleigh, July 8th, 1870.

In accordance with authority vested in me by the Constitution of the State of North Carolina, and by virtue of an act passed at the last session of the General Assembly, entitled "An act to secure the better protection of life and property," ratified the 29th day of January, 1870, *I hereby declare the county of Caswell to be in a state of insurrection.*

L. S. Done at our city of Raleigh, this the 8th day of July, in the year of our Lord one thousand eight hundred and seventy, and in the ninety-fourth year of our Independence.

W. W. HOLDEN, *Governor.*

By the Governor:
W. R. RICHARDSON, *Private Secretary.*

This respondent therefore denies and declares to be both false and scandalous, the allegation in said first article, that

"William W. Holden, Governor of said State, unmindful of the high duties of his office, the obligation of his solemn oath of office, and the Constitution and laws of said State, and intending to stir up civil war and subvert personal and public liberty and the Constitution and laws of said State, and of the United States, and contriving and intending to humiliate and degrade the said State and the people thereof, and especially the people of the county of Alamance, and to provoke the people to wrath and violence, did, under color of said office, on the seventh day of March, in the year of our Lord one thousand eight hundred and seventy, in said State, of his own false, corrupt and wicked mind and purpose, proclaim and declare that the county of Alamance, in said State, was in insurrection."

"On the contrary this respondent caused the said proclamation, as well in the case of the county of Alamance as in the county of Caswell, to be issued in his official capacity as Governor of the State of North Carolina, truly for the causes therein and herein set forth, and not until, in his judgment, the civil authorities in each of the said counties had become unable to protect the citizens thereof in the enjoyment of life and property, and he had been long and constantly importuned by letters from citizens in various parts of the State, and in person, by many of the victims of the outrages which are herein detailed, and urged and counseled

by many of the most respectable citizens of the State, to adopt the said means as some protection to society in said counties.

Further answering, this respondent denies the allegation in said first article that this respondent "did, after the days and times last aforesaid (meaning after the 7th day of March, 1870,) send bodies of armed, desperate and lawless men, organized and set on foot without authority of law, into said county, and occupy the same by military force, and suspend civil authority, and the constitution and laws of the State; and did, after the days and times last aforesaid, and before the time of impeachment in this behalf, through and by means of such armed, desperate and lawless men, arrest many peaceable and law-abiding citizens of said county of Alamance, then and there about their lawful business; and did detain, hold, imprison, hang, beat and otherwise maltreat and injure many of them, to-wit: Lucien H. Murray, George S. Rogers, William Bingham, Alexander Wilson, Walter Thornton, William Redding, Thomas M. Holt, George Andrews, John Andrews, Frederick Blanchard, Adolphus G. Moore, John Roberson, James N. Holt, William Tate, Alexander Patten, Jesse Grant, Lemuel Whitsett, Josiah Thompson, Sidney Steel, George Johnson, William Patten, Joseph Wright, Benjamin McAdams, Ruffin Andrews, Thomas Ray, Joseph Prichard, Lofton Tear, Joseph Thompson, Henry Cooke, William Andrews, M. N. Shaw, John Long, James H. Anderson, Joseph Gibson, Henry Prichard, Joseph Nelson, James R. Murphy, Jr., William Kirkpatrick, Thomas Gray, Jefferson Younger, Frank Mebane, Clement Curtis, John W. McAdams, William Moore, William Clendenen, D. W. Weeden, Daniel Moses, P. Thompson, David Moore, Monroe Fowler, Henry C. Hurdle, William Whitsett, Albert Murray, J. G. Moore, Joseph Kirkpatrick, W. V. Montgomery, John Trollinger, Jerry Whitsett, Calvin Gibson, John G. Albright, Robert Hannah, William Johnson, Henderson Scott, William Stockard, James Dickson, K. A. Albright, Thomas Lutterloh, John Grant, James Foust, John Curtis, A. Thompson, Robert Stockard, J. A. Moore, James T. Hunter, John S. Scott, John Smith, George Andrews, Milton Packard, Henry Robertson, John R. Stockard, John Curtis and Joseph Stockard, when in fact and truth there was no such or any insurrection in said county of Alamance," and declares the fact to be: That by the provisions of an act of the General Assembly of the State of North Carolina, entitled "An act to organize a militia of North Carolina," ratified the 17th day of August, 1868, the Governor is authorized to accept and organize regiments of volunteer infantry not exceeding six: also to accept and organize battalions of cavalry not to exceed three, and one volunteer battery of artillery. And the Governor is required to appoint and commission all the officers thereof, and, according to the provisions of said act, this respondent, as Governor of North Carolina, caused to be organized a body of volunteer militia of good and lawful men, and of good behavior and deportment, and appointed and commissioned citizens of North Carolina, and no others, officers thereof, and having declared the said counties of Alamance and Caswell to be in a state of insurrection, as, by the Constitution and laws of North Carolina, he, as Governor thereof, under the circumstances herein set forth, was empowered and had a right to do, he directed the said body of militia, so by him organized, to proceed into the counties of Alamance and Caswell, so declared by him to be in a state of insurrection as aforesaid, for the purpose, and no other, of protecting the inhabitants thereof in the enjoyment of life and property, and issued to the officers in command of the same an order, of which the following is a copy:

STATE OF NORTH CAROLINA,
ADJUTANT GENERAL'S OFFICE,
Raleigh, July 13th, 1870.

SPECIAL ORDER No. 11.

Col. G. W. Kirk, commanding 2nd Regiment North Carolina State Troops, will at once procure the necessary transportation for his camp equipage, and proceed to Yanceyville, and assume command of Alamance and Caswell counties.

He will take the necessary steps to preserve order, and to give the fullest protection to life and property.

He will take charge of the public buildings, and arrest and hold for examination persons accused of felonies, especially those charged with, or of being accessory to the murder of J. W. Stevens and Wyatt Outlaw.

By command of Gov. HOLDEN, Commander-in-Chief:

A. W. FISHER, *Ad'jt Gen'l.*

This respondent admits that under the aforesaid general order, the persons named in said first article, were arrested and detained and held for examination by the officers commanding the said organized body of militia in the county of Alamance, and that this respondent, as Governor of North Carolina, did approve of their said arrest and detention, but this respondent was informed and believes and so charges that the said persons and each of them were suspected persons, and arrested on probable cause, for crimes alleged to have been committed by them and each of them. This respondent denies that said named persons, or any of them, were hanged, beaten, or otherwise maltreated, or injured, as alleged in said first article, but if the said persons, or any of them, were in anywise maltreated or injured, the same was done contrary to the orders and without the advice, procurement, knowledge or consent of this respondent; on the contrary the orders of this respondent were to treat all such persons as it might be found necessary to arrest humanely and kindly.

This respondent denies, and declares to be false, the allegations in said 1st article, charging that he, the said "William W. Holden, Governor as aforesaid, well knew that such and said proclamation was groundless and false, and that there was no insurrection in said county, and that all civil authorities, both State and county, in said county, were peacefully and regularly in the full, free and unrestrained exercise in all respects of the functions of their offices, and the courts were all open, and the due administration of the law was unimpeded by any resistance whatsoever, whereby the said William W. Holden, Governor as aforesaid, did then and there, and in the way and manner, and by the means aforesaid, commit and was guilty of a high crime in office, against the Constitution and laws of said State, and the peace, interests and dignity thereof."

On the contrary this respondent declares the facts to be as in the premises he has answered and set forth, and further this respondent says that a majority of the white adult male citizens of the said county of Alamance, and also of the county of Caswell, including the sheriff of said county of Alamance, were members of the Kuklux organizations aforesaid. Grand juries refused to find true bills against members of the said organizations, or if perchance any were found against such members, petit juries refused to convict the same, magistrates failed to act, and the Judge and Solicitor of the district attended the Courts merely as a matter of form, a reign of terror existed, and the administration of justice was

wholly impeded. In no one instance had the perpetrators of the crimes and felonies herein detailed and set forth been brought to justice, men, obnoxious to the illegal organizations aforesaid, dare not sleep beneath their roofs at night, but, abandoning their wives and children, wandered in the woods till day, murder stalked abroad in the land, and those whose hands were red with the blood of their victims remained unnoticed and unpunished.

Further answering, this respondent denies that he was actuated by any false, corrupt and wicked mind and purpose, in proclaiming and declaring the said counties of Alamance and Caswell in a state of insurrection; on the contrary he was therein actuated by the purest motives, by a sincere desire to restore the efficiency of the civil authority, to protect life and property, and to promote the welfare of the people of the whole State.

Further answering, this respondent says that the Constitution of North Carolina and the laws then in force, vested in the Governor thereof, a discretionary power to declare a county to be in a state of insurrection, whenever in his judgment the civil authorities thereof were unable to protect its citizens in the enjoyment of life and property, that full faith and credit are to be given to the action of this respondent as Governor of North Carolina in declaring, as aforesaid, the counties of Alamance and Caswell in a state of insurrection, and he submits and he insists that his said action cannot be questioned by any other department of the government.

Further answering, this respondent denies the allegation in said first article that he was guilty of a high crime in office against the constitution and laws of said State and the peace, interests and dignity therof.

ANSWER TO ARTICLE II.

And for answer to the said second article, this respondent says that he abides by his answer to the said first article, in so far as the same is responsive to the allegations contained in the said second article, and without here again repeating the same answer, prays the same to be taken as answer to this second article as fully as if here again set out at length; and as to the new allegation contained in the said second article, that this respondent did detain, hold, imprison and otherwise maltreat and injure John Kerr, Samuel P. Hill, William B. Bowe, Nathaniel M. Roane, Frank A. Wiley, Jesse C. Griffith, J. T. Mitchell, Thomas J. Womack, A. G. Yancey, John McKee, A. A. Mitchell, Yancey Jones, J. M. Neal, Barzillai Graves, Robert Roane, James R. Fowler, M. C. Hooper, James C. Williamson and Peter H. Williamson, this respondent admits that the said named parties were arrested and detained and held for examination in the said county of Caswell by officers commanding the organized body of militia therein, and that this respondent, as Governor of North Carolina, did approve of their arrest and detention, but this respondent was informed and believes and so charges that the aforesaid persons, and each of them were arrested on probable cause, and were either suspected persons or persons accused of being accessories or principals in offences against the laws. But this respondent denies that the said named persons, or any or them, were maltreated and injured, or if the said persons, or any of them, were maltreated or injured, as alleged in said second article. the same was done contrary to the orders, and without the advice, procurement, knowledge or consent of this respondent.

Further answering, this respondent denies all and all manner of allegations in said second article set forth which he has not already answered.

Further answering, this respondent denies, as alleged in said second article, that he was guilty of a high crime in office against the Constitution and laws of said State, and the peace, interests and dignity thereof, as in said second article set forth.

ARTICLE III.

And for answer to the said third article, this respondent says that he abides by his answer to the first and second articles, in so far as the same is responsive to the allegations contained in said third article, and without here again repeating the same answer, prays the same to be taken as an answer to this third article, as fullly as if here set out at length, and as to the new allegation contained in said third article, this respondent says: That the said Josiah Turner, Junior, was, on the fifth day of August, 1870, and for some time previous thereto had been, and now is editor of a newspaper published in the city of Raleigh, in said State, and known as the *Sentinel*, which at that time had a large circulation, and for some time previous thereto had circulated largely in the said counties of Alamance and Caswell. By his writings in said newspaper, as well as by his public speeches, made in various parts of the State, and by a continued course of agitation which he had pursued, the said Josiah Turner, Junior, in the judgment of this respondent, had contributed largely to produce the deplorable state of affairs which existed in the said counties of Alamance and Caswell, as detailed in the answer of this respondent to article first, and which had compelled this respondent to declare said counties in a state of insurrection, as set forth in his said answer to the said first article. This respondent was led to believe, and did believe, the said Josiah Turner, Junior, to be a member of the aforesaid illegal organizations, and well knew that the said Josiah Turner, Junior, by his writings and speeches, unmindful of his duty as a citizen, and of the peace of the State, was using his endeavors at and in the said counties of Alamance and Caswell to bring about a collision between the militia stationed in the counties of Alamance and Caswell and the citizens thereof, and to persuade, incite and induce the citizens of the aforesaid counties to eject the said militia by force therefrom, and was likewise endeavoring to persuade, incite and induce the citizens of other parts of the State to enter the said counties of Alamance and Caswell, and to drive therefrom by force of arms the said militia stationed therein, although the said Josiah Turner, Junior, well knew that the said counties of Alamance and Caswell had been proclaimed by this respondent as Governor of North Carolina, to be in a state of insurrection, and that the said militia had been stationed therein to protect the citizens thereof in the enjoyment of life and property, and all this by due warrant of law. Moreover, the said Josiah Turner, Junior, under a morbid craving for notoriety, a desire to advance his political prospects, and a hope to increase his patronage as a citizen and editor amongst his political friends, did resort to various ways and means to procure his own arrest, and to that end frequently challenged and dared this respondent to make the same, expressing his purpose to protect himself by force of arms and declaring that he should be arrested only over the dead bodies of such as might attempt the same, and counselling the citizens of Alamance and Caswell counties to pursue the like

course whenever any efforts should be made to arrest them, or any of them, by the officers commanding the militia stationed in said counties. This respondent thus having reason to believe that the said Josiah Turner, Junior, would endeavor to provoke his own arrest, gave express verbal orders to the officers commanding the said body of militia in Alamance and Caswell counties not to arrest the said Josiah Turner, Junior, at any point or place beyond the limits of said last named counties. But this respondent having good reason to believe that the said Turner was a member of the illegal organizations aforesaid and a seditious person, inimical to the good order of society and the peace of the State, an apologist and an instigator of all the outrages which had been committed in the aforesaid counties, as in the premises detailed and set forth, and was then in fact engaged at and in the said counties in the effort to bring about a state of civil war in the said counties, under an imperative sense of duty, actuated solely by a desire to repress disorder, and to preserve the peace of the State, by virtue of the power vested in him by the Constitution and laws, as Governor of North Carolina, did order the officers commanding said militia in the counties of Alamance and Caswell to arrest the said Josiah Turner, Junior, if found within the limits of said last named counties, and not elsewhere. This respondent denies that he ordered the arrest of the said Josiah Turner, Junior, in the said county of Orange, and if the said Turner was arrested therein, as alleged and set forth in said third article, the said arrest was made contrary to the orders, and without the advice, procurement, knowledge or consent of this respondent. But this respondent admits, that it was reported to him by the officers commanding the said body of militia in the said counties of Alamance and Caswell, that the said Josiah Turner, Junior, was under arrest in the said county of Alamance, and that thereupon this respondent, as Governor of North Carolina, by virtue of the power vested in him by law, did order the detention of the said Josiah Turner, Junior, in the said counties of Alamance and Caswell, and not elsewhere, and this upon public considerations growing out of his executive duties for the reasons and causes herein set forth.

Further answering, this respondent denies the allegation in said third article set forth that he, Governor as aforesaid, did then and there commit a high misdemeanor in office, against the Constitution and laws of said State and the peace, interest, and dignity thereof.

ANSWER TO ARTICLE IV.

And for answer to said fourth article, this respondent says, that he abides by his answer to the said first and second articles in so far as the same are responsive to the allegations contained in said fourth article, and without here again repeating the same answer prays the same be taken as an answer to this fourth article, and as to any allegations in said fourth article not already answered in this respondent's answer to the said first and second articles this respondent denies the same.

Further answering, this respondent denies that he was guilty of a high misdemeanor in office against the Constitution and of said State, and the peace, interests and dignity thereof as alleged in said fourth article.

ANSWER TO ARTICLE V.

And for answer to article fifth, this respondent says, that he abides by his

answer to the first article in so far as the same is responsive to the allegations contained in said fifth article, and without here again repeating the same answer, prays the same to be taken as an answer to this fifth article, as fully as if here again set out at length; and as to the new allegations contained in said fifth article, this respondent answering says:

That he did not otherwise arm and equip as soldiers, a large number of men, nor any number of men, nor organize as an army a large number of men, nor any number of men, under the command of George W. Kirk, B. G. Burgen, H. C. Yates, or under the command of any other person or persons, and send the same into the county of Alamance, save as this respondent has set forth in his answer to the said first article, which he prays may be considered as here again repeated.

This respondent admits that he organized a body of militia according to the Constitution and laws of North Carolina, as set forth in his answer to the said first article, and did order the same into the county of Alamance, as in his answer to said first article set forth and declared, and not otherwise.

And this respondent further admits, that George W. Kirk, Colonel commanding the said body of militia in Alamance county, did, for good and sufficient cause, arrest and detain the said Adolphus G. Moore, named in said fifth article, and that the said arrest and detention was approved of by this respondent as Governor of North Carolina. Furthermore, this respondent admits that the said Adolphus G. Moore applied to the Honorable Richmond M. Pearson, Chief Justice of North Carolina, for the writ of *habeas corpus* to the end set forth in said fifth article, and that the said Chief Justice caused the said writ to be issued and directed to the said George W. Kirk, commanding him to produce the body of said Moore, at the time and place alleged in said fifth article, and this respondent further admits that the said writ was served on the said Kirk, and that the said Kirk made no return thereto and refused to obey the same, and that this failure on the part of said Kirk to make return to said writ and to produce the body of the said Moore in obedience thereto, was done by the order of this respondent as Governor of North Carolina. But this respondent denies that therein he acted contrary to law, and declares that he was impelled by the highest sense of public duty and by the conviction that the public safety required the detention of the said A. G. Moore and the other parties under arrest in the said counties of Alamance and Caswell, and this respondent submits, as a part of his answer, his letter of July 19th, 1870, addressed to the Honorable Richmond M. Pearson, Chief Justice of the Supreme Court of North Carolina, of which the following is a copy:

"EXECUTIVE OFFICE,
Raleigh, July 1, 1870.

To the HON. RICHMOND M. PEARSON,
Chief Justice of North Carolina:

"SIR:—Your communication of yesterday concerning the arrests made by Col. Geo. W. Kirk, together with the enclosed, is received.

"I respectfully reply:—That Col. Geo. W. Kirk made the arrests and now detains the prisoners named by my order. He was instructed firmly but respectfully to decline to deliver the prisoners. No one goes before me in respect for the

civil law, or for those whose duty it is to enforce it, but the condition of Alamance county, and some other parts of the State, has been and is such that, though reluctant to use the strong powers vested in me by law, I have been forced to declare them in a state of insurrection.

"For months past there has been maturing in these localities, under the guidance of bad and disloyal men, a dangerous secret insurrection. I have invoked public opinion to aid me in suppressing this treason! I have issued proclamation after proclamation to the people of the State to break up these unlawful combinations! I have brought to bear every civil power to restore peace and order, but all in vain! The Constitution and laws of the United States and of this State are set at naught; the civil courts are no longer a protection to life, liberty and property; assassination and outrage go unpunished and the civil magistrates are intimidated and are afraid to perform their functions.

"To the majority of the people of these sections the approach of night is like the entrance into the valley of the shadow of death; the men dare not sleep beneath their roofs at night, but abandoning their wives and little ones, wander in the woods until day.

"The civil government was crumbling around me. I determined to nip this new treason in the bud.

"By virtue of the power vested in me by the constitution and laws, and by that inherent right of self-preservation which belongs to all governments, I have proclaimed the county of Alamance in a state of insurrection. Col. Geo. W. Kirk is commanding the military forces in that county, made the arrests referred to in the writ of *habeas corpus*, and now detains the prisoners by my order.

"At this time I am satisfied that the public interests require that these military prisoners shall not be delivered up to the civil power.

"I devoutly hope that the time may be short when the restoration of peace and order may release Alamance county from the presence of military force and the enforcement of military law. When that time shall arrive I shall promptly restore the civil power.

W. W. HOLDEN, *Governor.*"

This respondent, as Governor of North Carolina, and by virtue of the powers vested in him by the Constitution and laws of the said State, actuated by the most patriotic motives, and in the exercise of his best judgment, had declared the counties of Alamance and Caswell to be in a state of insurrection, in the manner and for the causes set forth in his answer to the first article. The said insurrection had not been suppressed, and it was the duty of this respondent, as Governor of North Carolina, under the sanctity of his official oath, to take all lawful ways and means to suppress the same. This respondent verily believed that the state of affairs existing in the counties of Alamance and Caswell, and in various other counties throughout the State, if not remedied, would precipitate another collision between the people of this State and the Government of United States, and this respondent could see no other means of remedying the said state of affairs in the said counties of Alamance and Caswell, and in various other counties throughout the State, and those he had adopted, as set forth in his answer to said first article and in the arrest and detention of those men, of whom the said Moore was one, whose evil influence, counsel and example had precipitated the said counties into insurrection. This respondent believed that the safety of the State would be im-

perilled by yielding obedience at that time to the exigency of the said writ, in this and in other cases where parties had been arrested and detained in said counties of Alamance and Caswell; and for this reason he felt it to be his imperative duty as Governor of North Carolina, to withhold obedience in the said case. And herein this respondent believed, and does still believe, and now submits and insists that he was sustained by the opinion of the Honorable the Chief Justice aforesaid, rendered in the application of the said A. G. Moore for the said writ of *habeas corpus*. By every principle of fair construction, the said Chief Justise holds, in his said opinion, that "the safety of the State is the supreme law," and that this respondent as Governor of North Carolina, was the sole Judge whether the exigency had arisen, which, upon said principle, would justify this respondent in withholding obedience to the said writ. It was upon this principle that this respondent acted, and he submits and desires to be taken as a part of this his answer, his letter of July 26th, 1870, addressed to the Honorable the Chief Justice aforesaid, of which the following is a copy:

"EXECUTIVE DEPARTMENT,
Raleigh, July 26th, 1870.

"To the HON. R. M. PEARSON,
Chief Justice of the Supreme Court of N. C.:

"Sir: I have had the honor to receive, by the hands of the Marshal of the Supreme Court, a copy of your opinion in the matter of A. G, Moore; and the Marshal has informed me of the writ in his hands for the body of said Moore, now in the custody of my subordinate officer, Col. George W. Kirk.

"I have declared the counties of Alamance and Caswell in a state of insurrection, and have taken military possession of them. This your Honor admits I had the power to do 'under the Constitution and laws.' And not only this, 'but to do all things necessary to suppress the insurrection,' including the power to arrest all *suspected* persons' in the above mentioned counties.

"Your Honor has thought proper also to declare that the citizens of the counties of Alamance and Caswell are *insurgents*, as the result of the constitutional and lawful action of the Executive, and that therefore, you will not issue the writ for the production of the body of Moore to any of the men of the said counties; that 'the *posse comitatus* must come from the county where the writ is to be executed,' and that any other means would be illegal.

"I have official and reliable information that in the counties above named, during the last twelve months, not less than one hundred persons, 'in the peace of God and the State,' have been taken from their homes and scourged, mainly, if not entirely on account of their political opinions; that eight murders have been committed, including that of a State Senator, on the same account; that another State Senator has been compelled from fear for his life to make his escape to a distant State. I have reason to believe that the governments of the said counties have been mainly if not entirely in the hands of men who belong to the Kuklux klan, whose members have perpetrated the atrocities referred to; and that the county governments have not merely omitted to ferret out and bring to justice those of this klan who have thus violated the law, but that they have actually shielded them from arrest and punishment. The State judicial power in

the said counties, though in the hands of energetic, learned and upright men, has not been able to bring criminals to justice; indeed, it is my opinion, based on facts that have come to my knowledge, that the life of the judge whose duty it is to ride the circuit to which the said counties belong, has not been safe, on account of the hatred entertained towards him by the klan referred to, because of his wish and purpose to bring said criminals to justice. For be it known to your Honor that there is a wide-spread and formidable secret organization in this State, partly political and partly social in its objects; that this organization is known, first, as '*The Constitutional Union Guards*,'—secondly, as '*The White Brotherhood*,'—thirdly, as '*The Invisible Empire*;'—that the members of this organization are united by oaths which ignore or repudiate the ordinary oaths or obligations that rest upon all other citizens to respect the laws and to uphold the government; that these oaths inculcate hatred by the white against the colored people of the State; that the members of this klan are irreconcilably hostile to the great principle of political and civil equality on which the government of this State has been reconstructed; that these klans meet in secret, in disguise, with arms, in uniform of a certain kind intended to conceal their persons and their horses, and to terrify those whom they assault or among whom they move; that they hold their camps in secret places and decree judgment against their peaceable fellow-citizens, from mere intimidation to scourgings, mutilations and murder, and that certain persons of the klan are deputed to execute these judgments; that when the members of this klan are arrested for violations of law, it is most difficult to obtain bills of indictment against them, and still more difficult to convict them, first, because some of the members or their sympathizers are almost always on the grand and petit juries, and secondly, because witnesses who are members or sympathizers unblushingly commit perjury to screen their confederates and associates in crime; that this klan, thus constituted and having in view the objects referred to, is very powerful in at least twent-five counties of the State, and has had absolute control for the last twelve months of the counties of Alamance and Caswell.

"Under these circumstances I would have been recreant to duty and faithless to my oath, if I had not exercised the power in the several counties which your Honor has been pleased to say I have exercised constitutionally and lawfully; especially as, since October, 1868, I have repeatedly, by proclamations and by letters, invoked public opinion to repress these evils, and warned criminals and offenders against the laws of the fate that must in the end overtake them, if, under the auspices of the klan referred to, they should persist in their course.

"I beg to assure your Honor that no one subscribes more thoroughly than I do to the great principles of *habeas corpus* and trial by jury. Except in extreme cases, in which beyond all question 'the safety of the State is the supreme law,' these privileges of *habeas corpus* and trial by jury should be maintained.

"I have already declared that, in my judgment, your Honor and all the other civil and judicial authorities are unable *at this time* to deal with the insurgents. The civil and the military are alike constitutional powers—the civil to protect life and property when it can, and the military only when the former has failed. As the Chief Executive I seek to restore, not to subvert, the judicial power. Your Honor has done your duty, and in perfect harmony with you I seek to do mine.

"It is not I nor the military power that has supplanted the civil authority; that has been done by the insurrection in the counties referred to. I do not

see how I can restore the civil authority until I "suppress the insurrection," which your Honor declares I have the power to do; and I do not see how I can surrender the insurgents to the civil authority until that authority is restored. It would be mockery in me to declare that the civil authority was unable to protect the citizens against the insurgents, and then turn the insurgents over to the civil authority. My oath to support the Constitution makes it imperative on me to "suppress the insurrection" and restore the civil authority in the counties referred to, and this I must do. In doing this I renew to your Honor expressions of my profound respect for the civil authority, and my earnest wish that this authority may soon be restored to every county and neighborhood in the State.

I have the honor to be, with great respect,

Your obedient servant,

W. W. HOLDEN, *Governor.*"

Further answering, this respondent declares that it was his purpose to detain the said Adolphus G. Moore, and the other persons so arrested in the said counties of Alamance and Caswell, only until such time as he might with safety to the State surrender them to the civil authorities, and as soon as in his judgment the said time had arrived, he so surrendered them, and this respondent submits, as a part of this his answer, his letter of August 15th, 1870, addressed to the Honorable the Chief Justice aforesaid, of which the following is a copy:

"STATE OF NORTH CAROLINA,
EXECUTIVE DEPARTMENT,
Raleigh, Aug. 15th, 1870.

"*To the* HON. R. M. PEARSON,
Chief Justice Supreme Court of North Carolina:

"DEAR SIR: In my answer to the notices served upon me by the Marshal of the Supreme Court, in the matter of Adolphus G. Moore and others, *ex parte* I stated to your honor that at that time the public interests forbade me to permit Col. George W. Kirk to bring before your Honor the said parties; at the same time I assured your Honor that as soon as the safety of the State should justify it, I would cheerfully restore the civil power, and cause the said parties to be brought before you, together with the cause of their caption and detention.

"That time has arrived, and I have ordered Col. George W. Kirk to obey the writs of *habeas corpus* issued by your Honor. As the number of prisoners and witnesses is considerable, I would suggest to your Honor that it would be more convenient to make return to the writs at the capitol in Raleigh. Col. Kirk is prepared to make such return as soon as your Honor shall arrive in Raleigh.

With great respect,

Your obedient servant,

W. W. HOLDEN, *Governor.*"

And so this respondent denies that by reason of any new matter alleged in the said fifth article, he did commit high crimes and misdemeanors in office against

the Constitution and laws of said State, and the peace, dignity and interests thereof.

ANSWER TO ARTICLE VI.

And for answer to said sixth article, this respondent says that he abides by his answer to said first, second, fourth and fifth articles, in so far as the same are responsive to the allegations contained in the said sixth article, and without here again repeating the same answer, prays the same to be taken as answer to this sixth article as fully as if here again set out at length; and as to the new allegation contained in said sixth article, this respondent answering, says: That this respondent admits the arrest and detention of the persons named in said sixth article in manner and form as he hath heretofore admitted the same, and not otherwise. This respondent further admits that the said named persons, and each of them, sued out writs of *habeas corpus* before the Honorable Richmond M. Pearson, Chief Justice of the Supreme Court of North Carolina, returnable at the time and place stated and set forth in the said sixth article; that the said writs were duly served upon George W. Kirk, as in said sixth article stated; that the said George W. Kirk refused to produce the said named persons in obedience to the said writs, but continued to detain the said persons, and this under the orders and with the approval of this respondent, as Governor of North Carolina, as in said sixth article stated and set forth. Further answering, this respondent says that he abides by his answer to the fifth article, and without here again repeating the same answer, prays that the same may be taken as an answer to this sixth article, and that each and every part thereof may be taken as applied to the persons in said sixth article named, and to each of them as fully, and in like manner, as the same is applied to Adolphus G. Moore in said fifth article named and specified.

And so this respondent denies that by reason of any new allegations in this sixth article contained he did commit high crimes and misdemeanors in office against the Constitution of said State and the peace, dignity and interests therof.

ANSWER TO ARTICLE VII.

And for answer to said seventh article, this respondent says he abides by his answer to said first, second, third and fourth articles so far as the same are responsive to the allegations contained in said seventh article, and without here again repeating the same, prays the same be taken as an answer to this seventh article as fully as if here again set out at length; and as to the new allegation contained in said seventh article, that this respondent did "recruit and call together from this State and the State of Tennessee a large number of men, to wit: Five hundred men and more, many of them of the most reckless, desperate, ruffianly and lawless characters, and did then and there organize, arm and equip them as an army of soldiers, and place the same under the chief command of a notorious desperado from the State of Tennessee, by the name of George W. Kirk, having falsely proclaimed the counties of Alamance and Caswell in said State in a state of insurrection, and did send large numbers of such armed desperate men into said counties, under the immediate command of the said George W. Kirk, and two other desperadoes from the State of Tennessee, to wit: One B. G. Burgen and

one H. C. Yates, and did there and then without any warrant or authority, seize, hold, imprison and deprive of their liberty for a long time, to wit: For the time of twenty days and more, many of the peaceable and law-abiding citizens of said counties, to wit: John Kerr, Samuel P. Hill, ——— Scott, John R. Ireland and many others, and seize, hold, imprison and deprive of their liberty, and hung by the neck William Patten, Lucian H. Murray and others, and did thrust into a loathsome dungeon Josiah Turner, Junior, and F. A. Wiley," this respondent denies the same and declares the facts to be as hereinbefore stated and set forth in his answer to the first, second, third and fourth articles, and especially that the body of militia sent by him into the counties of Alamance and Caswell, as hereinbefore set forth, were organized according to the provisions of the act of the General Assembly of the State of North Carolina, entitled "An act to organize a militia of North Carolina," ratified the 17th day of August, A. D. 1868. This respondent denies that the men composing said volunteer militia were many of them the most reckless, desperate, ruffianly and lawless characters from the State of Tennessee; on the contrary this respondent declares that the said men were citizens of North Carolina at and immediately before the organization of said militia, and were of good deportment and behavior, and were received and organized strictly according to the provisions of said act, and not otherwise; and if any of them at the time of said organization were citizens of the State of Tennessee the same was unknown to this respondent. Further answering, this respondent says that the said George W. Kirk, B. G. Burgen and H. C. Yates, officers in command of said volunteer militia, were at the time of the organization of the said militia, and immediately before, citizens of North Carolina, and were duly commissioned and sworn. But this respondent submits, and insists, that, in and by the provisions of the aforesaid act, he was at liberty to receive and enroll, in the said volunteer militia, any citizen of the United States. And as to the seizing, holding, imprisoning and depriving of their liberty, and maltreating the persons named in said seventh article, this respondent denies the same, and has nothing further to answer than he has already answered.

And as to the allegation in said seventh article contained, that this respondent, "to maintain, support and aid the lawless armed men so organized, armed and equipped, did, under color of his said office from time to time during the said months of June, July and August, without any lawful authority, make his warrant upon David A. Jenkins, Treasurer of the State, for large sums of money, to-wit: For the sum of seventy thousand dollars and more, and cause and procure the said David A. Jenkins, the Treasurer of the State, to recognize such unlawful warrant, and pay out of the Treasury such said large sums of money to the agent or paymaster of said William W. Holden, Governor as aforesaid, for the unlawful uses and purposes aforesaid," this respondent denies the same in manner and form as therein set forth.

Further answering, this respondent denies that he did, then and there, as alleged in said seventh article, commit a high misdemeanor in office, in violation of the Constitution and laws of this State, and of the peace, interests and dignity thereof.

ANSWER TO ARTICLE VIII.

And for answer to the said eighth article, this respondent abides by his answer to said first, second, fourth, fifth, sixth and seventh articles, in so far as the same are responsive to the allegations contained in the said eighth article, and without here again repeating the same answers, prays the same to be taken as answer to this eighth article as fully as if here again set out at length. And as to the new allegation contained in the said eighth article, "that the said William W. Holden, Governor of the said State, unmindful of the high duties of his said office, and the obligations of his solemn oath of office, and contriving and intending, and with a view for the purpose of supporting and maintaining an armed military force in said State, which he had then and there recruited, organized and formed for illegal purposes, without the sanction of the Constitution and laws of the said State, but in contravention of the same, did from to time, in the months of June, July and August, in the year of our Lord one thousand eight hundred and seventy, under color of his said office, in said State, without the sanction of the Constitution and laws of said State, and in violation of the same make his warrants as such Governor upon the Treasury of the said State, for large sums of money, to-wit: For the sum of eighty thousand ($80,000) dollars and more, to be used for the unlawful purpose aforesaid: that the said William W. Holden, Governor as aforesaid, under color of his said office, then and there persuaded, commanded, incited and procured David A. Jenkins, Treasurer of said State, to recognize such and said unlawful warrants on the Treasury of said State, and to deliver such and said sums of money to such agents of the said William W. Holden, Governor as aforesaid, as he the said William W. Holden, Governor as aforesaid, might from time to time designate and appoint; that in pursuance of such warrants and orders of the said William W. Holden, Governor as aforesaid, the said David A. Jenkins, Treasurer as aforesaid, delivered to one A. D. Jenkins, called the paymaster, appointed by the said William W. Holden, Governor as aforesaid, for such purpose, large sums of money from said Treasury, to-wit: The sum of forty thousand dollars or more," this respondent denies the same, in manner and form as therein set forth; and as to the further allegation in said eighth article, that "in the month of August, in the year of our Lord one thousand eight hundred and seventy, one Richard M. Allison, a citizen of the county of Iredell, in said State, brought his suit in the Superior Court of the last named county, in his own behalf and in the behalf of all the tax payers of said State, praying that a Writ of Injunction might then and there be granted, and issued according to law, restraining the said David A. Jenkins, Treasurer as aforesaid, from delivering any sum or sums of money to the said William W. Holden, Governor as aforesaid, or any other persons, in obedience to such orders and for such purposes, and also restraining the said A. D. Jenkins, as such paymaster, or in any other respect or capacity from disbursing or disposing of said sum of money so in his said hands, or any part thereof, for the purposes thereof; that the Honorable Anderson Mitchell, Judge of said Superior Court, then and there granted the Writ of Injunction so prayed for, enjoining and forbidding the said David A. Jenkins, Treasurer as aforesaid, from delivering any money from said Treasury, in obedience to any such warrant or order, so made by the said William W. Holden, Governor as aforesaid, and enjoining and forbidding the said A. D. Jenkins, as such paymaster or agent, from using or disbursing the said

money or any part of it, so in his hands, to or for the use of said armed body of men for any of the purposes aforesaid; that the said David A. Jenkins, Treasurer, and the said A. D. Jenkins, were each duly served with said Writ of Injunction," this respondent says that he has not sufficient information to answer whether the same be true or false, in manner and form as therein set forth, and insists upon the proof thereof.

And as to the additional allegation in said eighth article that "William W. Holden, Governor as aforesaid, wickedly intending to suspend and subvert the laws of said State, and to defy and disregard the lawful authority of said Court, did afterwards, to-wit: After the month last aforesaid, persuade, incite, order, procure and command the said A. D. Jenkins to defy and disregard the said Writ of Injunction, and to deliver the said money so in his custody to another agent of the said William W. Holden, Governor as aforesaid, to be used for the unlawful purposes aforesaid; that the said A. D. Jenkins, in obedience to such last mentioned order, command and procurement of the said William W. Holden, Governor as aforesaid, and in disregard of such Writ of Injunction and the lawful authority of said Judge, did deliver the said money so in his hands to another agent of the said William W. Holden, Governor as aforesaid, to wit: To one Richard T. Berry, to be used for the unlawful purpose aforesaid, and the said William W. Holden, Governor as aforesaid, did then and there, in the way and manner, and by the means and for the purposes aforesaid, procure, order and command the said A. D. Jenkins so to disregard and disobey the said Writ of Injunction, and the lawful authority of said Judge, and did then and there, and in the way and manner and by the means and for the unlawful purpose aforesaid, defy, disregard, ignore, contravene, suspend and defeat the lawful purpose and effect of the Writ of Injunction so granted and issued by the said Judge; and thereupon and thereafter the said William W. Holden, Governor as afonesaid, the said sum of public money thus transferred as aforesaid to the hands of the said Richard T. Berry, did order and cause to be paid out and disbursed by him, the said Richard T. Berry, to, for and about the illegal purposes aforesaid, to wit: The payment of the expenses in keeping on foot, sustaining and maintaining the said illegal military force as aforesaid," this respondent denies the same.

And this respondent denies that he was guilty of a high misdemeanor in his said office of Governor, in violation of his oath of office, and in subversion of the laws in said State, and the peace, interest and dignity thereof, as alleged in said eighth article.

And this respondent, in submitting to this honorable court this his answer to the Articles of Impeachment exhibited against him, respectfully reserves leave to amend and add to the same from time to time, as may become necessary or proper, and when and as such necessity and propriety shall appear.

W. W. HOLDEN.

R. C. BADGER,
J. M. MCCORKLE,
NATHANIEL BOYDEN,
EDW. CONIGLAND,
W. N. H. SMITH,
of Counsel.

On motion of Mr. Graham, of Orange, it was ordered that the answer of the respondent be received and filed, and that a copy be furnished the house of representatives and to the managers of impeachment.

Mr. Graham, of Orange, moved that it be ordered that one hundred copies of the proceedings of the impeachment trial be printed on every day, and a copy laid on the desk of each member, and furnished to the parties and their counsel, on the succeeding day.

Upon this motion, Mr. Gilmer demanded the yeas, and nays. The senate agreed thereto, and the motion prevailed—yeas 37, nays 11.

Those who voted in the affirmative are:

Messrs. Adams, Albright, Allen, Barnett, Battle, Beasley, Bellamy, Brogden, Brown, Cook, Council, Crowell, Currie, Dargan, Eppes, Flemming, Flythe, Graham of Alamance, Graham of Orange, Hyman, Jones, Lassiter, Latham, Ledbetter, Lehman, Mauney, McClammy, Moore, Murphy, Olds, Price, Robbins of Davidson, Robbins of Rowan, Skinner, Speed and Waddell—37.

Those who voted in the negative are:

Messrs. Cowles, Gilmer, King, Linney, Love, Merrimon, Morehead, Norment, Troy, Whiteside and Worth—11.

On motion of Mr. Flemming, it was ordered that when the court adjourns, it will adjourn until to-morrow at 12 o'clock.

On motion of Mr. Graham, of Orange, it was ordered that the clerk of the senate have a sufficient number of blank subpœnas printed for the use of parties and their counsel during the trial.

On motion of Mr. Gilmer, the court adjourned.

THIRD DAY.

SENATE CHAMBER, January 24th, 1871.

At 12 m., the Chief Justice having taken the chair, the senate, pursuant to adjournment, proceeded to the consideration of the articles ot impeachment exhibited against William W. Holden, Governor of North Carolina.

Proclamation was made in due form by the doorkeeper.

Mr. McCotter, senator from the 8th district, appeared and was duly qualified by the chief justice.

Mr. Gilmer moved the adoption of the following:

Ordered, That after the proclamation made on each day, the doorkeeper notify the managers on the part of the house of representatives and counsel, and the respondent and his counsel, that the senate is ready to proceed with the trial of the impeachment.

Mr. Jones moved to strike out the words "and the respondent and his counsel."

Mr. Robbins, of Rowan, was proceeding to discuss the question, when Mr. Graham, of Orange, raised the point of order that under the XVIII Rule for the government of the impeachment trial, no debate could be had upon the adoption of any order or decision except by the consent of the senate.

The chief justice decided the point of order to be well taken, and submitted to the senate the question whether debate should be allowed, and it was decided in the affirmative.

The motion of Mr. Jones to strike out did not prevail, and the senate refused to make the order proposed by Mr. Gilmer.

The journal of the proceedings of the senate sitting on yesterday as court of impeachment was read and approved.

Mr. Sparrow in behalf of the managers on the part of the house of representatives, presented the replication adopted by the house of representatives to the answer of the respondent which was read.

REPLICATION by the House of Representatives of the State of North Carolina, to the answer of William W. Holden, Governor of the State of North Carolina, to the Articles of Impeachment exhibited against him by the House of Representatives.

The House of Representatives of the State of North Carolina have considered the several answers of William W. Holden-Governor of North Carolina, to the several articles of impeach, ment against him, by them exhibited in the name of themselves and all the people of said State, and reserving to themselves all advantage of exception to the insufficiency and irrelevancy of his answer to each and all of the several articles of impeachment, exhibited against said William W. Holden, Governor of said state, do deny each and every averment in said several answers, or either of them, which denies or traverses the acts, intents, crimes, misdemeanors, offences, or misconduct charged against said William W. Holden in said articles of impeachment, or either of them, and, for replication to said answer, do say that said William W. Holden, Governor of said state, is guilty of high crimes, misdemeanors and offences mentioned in said articles, and that the house of representatives are ready to prove the same.

Passed House of Representatives January 24th, 1871.

THOS. J. JARVIS,
Speaker of the House of Representatives.

Attest:
W. W. GATHER, *Clerk.*

On motion of Graham, of Orange, it was ordered that the

replication be received and filed, and an authenticated copy be furnished to the counsel of the rrespondent.

Mr. Lehman moved the adoption of the following:

Ordered, That the senate will commence the trial of the governor upon the articles of impeachment exhibited against him, on Monday, the 6th day of February, 1871, and proceed therein with all convenient dispatch, under the rules of the senate sitting upon the trial of impeachment.

Mr. Robbins, of Rowan, moved the adoption of the following as a substitute for the order proposed by Mr. Lehman:

Ordered, That the Senate, adhering to the order heretofore adopted, will proceed with the trial in the senate chamber on Monday, the 30th of January, 1871, and from day to day, unless otherwise ordered on reason shown.

The substitute was adopted by the following vote—yeas 25, nays 22.

Those who voted in the affirmative are:

Messrs. Adams, Albright, Battle, Brown, Cook, Council, Crowell, Flemming, Gilmer, Graham of Alamance, Graham of Orange, Jones, Latham, Linney, Mauney, Merrimon, Morehead, Robbins of Davidson, Robbins of Rowan, Skinner, Speed, Troy, Waddell, Whiteside and Worth—25.

Those who voted in the negative are:

Messrs. Barnett, Beasley, Bellamy, Brogden, Cowles, Currie, Dargan, Eppes, Flythe, Hawkins, Hyman, King, Lassiter, Ledbetter, Lehman, Love, McCotter, Moore, Murphy, Norment, Olds and Price—22.

The order as amended was then made.

Mr. Norment moved the adoption of the following:

Ordered, That the managers on the part of the house of representatives, together with their counsel, and also the res-

pondent and counsel be requested to take notice of the sitting of the court of impeachment, and regulate their attendance accordingly.

Mr. Gilmer offered as a substitute therefor the following:

Ordered, That after proclamation is made on each day the doorkeeper notify the managers on the part of the house of representatives and counsel, and the respondent and his counsel, that the senate is ready to proceed with the trial of impeachment.

The substitute was rejected, and the order as proposed by Mr. Norment was made.

Mr. Graham, of Orange, called the attention of the senate to the 9th and 10th sections of an act of the general assembly, ratified the 10th day of April, 1869, proceedings upon impeachment, and asked whether or not, in the opinion of the chief justice, it was necessary for senators to take any further oath before proceeding with the trial of the impeachment of Governor William W. Holden.

The chief justice announced his opinion to be that the oath hitherto taken by senators at the organization of the court of impeachment was sufficient, and that no other oath was necessary.

On motion of Mr. Moore, the court adjourned until 12 M. Monday, 30th January, 1871.

FOURTH DAY.

SENATE CHAMBER, Jan. 30, 1871

The COURT met at 12 o'clock, M., pursuant to adjournment, Hon. R. M. Pearson, Chief Justice of the Supreme, in the chair.

The CLERK proceeded to call the roll of Senators, when a quorum was found to be present.

Proceedings were opened by a proclamation made in due form by the doorkeeper.

The CLERK proceeded to read the journal of the proceedings of the previous meeting.

The CHIEF JUSTICE announced that the court was now ready to proceed to business.

Mr. SPARROW. Mr. Chief Justice, the board of managers for whom I speak have been instructed by the house of representatives to request of the senate, permission to amend their eighth article of impeachment. I will deliver it to the clerk and request that he may read the resolution containing the proposed amendment, and ask that the amendment be allowed.

The CLERK read the order of the house of representatives in the words following:

Order of the house of representatives relative to amendment of Article VIII of Impeachment of Wm. W. Holden, governor of North Carolina,

It is ordered by the house of representatives that the board of managers of the impeachment of William W. Holden, governor of the state of North Carolina, ask leave of the senate, sitting as a court of impeachment, to allow the house of representatives to amend Article VIII of impeachment heretofore exhibited by them against the said William W. Holden, governor as aforesaid, and now pending before the senate sitting as said court, by striking out the name of

"Richard T. Berry," wherever the same may occur in said article, and inserting instead thereof the name "John B. Neathery," and that the said managers be, and they are hereby authorized to make such amendment, if the senate sitting as such court shall so allow.

THOMAS J. JARVIS,
Speaker of House of Representatives.

Mr. BOYDEN. May it please the court, I understand that there has been some proposition to consent to this amendment, and that my associates have consented to it. I understand their consent to extend this far, that the amendment is not to be made without examining witnesses to prove the charge before the committee. We do not object to it now, provided it can be done by consent; but we wish it distinctly understood that these charges here are like the presentment of a grand jury. They are made upon proof. And we take it for granted that all the proof has been made of the charges already preferred. If the managers now think proper to make a new charge, we do not oppose the making it, provided it is made in the regular way, by going back to the house, examining the testimony, and if the testimony is found sufficient at common law, and then it can be done, we shall interpose no objection.

But, as this is a new proceeding, with which we are not very familiar, it might be proper to see whether such things can be done. I suppose there is no question but the managers have a right to withdraw these articles and present new articles in their place, or *a* new article. But it strikes me that these articles are precisely like a bill of indictment found by a grand jury. Under our constitution this is a high court of impeachment. It is not the senate at all, but is a court for the trial of impeachments; and under our law the house of representatives of the state are constituted a grand jury to find bills of indictment, and it seems to me that all the rules which apply to a court of law apply to this court. I desire to read an authorty upon this subject, which is a very high authority—that of

Charles Lee, the attorney general of the United States during the administration of President Washington, and which is to be found on page 101, volume 20, of the American State Papers. The caption of the paper is: "Inquiry into the official conduct "of a judge of the supreme court of the northwestern terri- "tory, communicated to the house of representatives, May 10, "1796." I will not read the whole opinion, but only so much which has relation to the present case.

"In the prosecution of an impeachment, such rules must be "observed as are essential to justice; and if not exactly the "same as those which are practiced in ordinary courts, they "must be analagous, and as nearly similar to them as forms "will permit. Thus, before an impeachment is sent to the "senate, witnesses must be examined in solemn form respect- "ing the charges before the committee of the house of repre- "sentatives to be appointed for that purpose, as in a case of "indiotment witnesses are examined by a grand jury. Upon "the trial the witnesses must give their testimony before the "senate, as in a case of indictment they do before the ordinary "court and petit jury."

That, if the court please, is the opinion of an attorney general of the United States, touching an inquiry into the official conduct, for the impeachment of George Turner, who was then a judge of the supreme court in the northwestern territory.

It would seem to me that the rules here must be exactly analagous. The senate of the United States is not like this, declared to be a high court of impeachment, but the trials of impeachment must be before that body. Our present constitution declares the senate of this state, I think in terms "the high court of impeachment."

It is this high court of impeachment which is now sitting; and as in the senate of the United States with the chief justice presiding, the rules of law are to prevail as far as possible, and it seems to me that in this case, in this court, the rules of law are also to apply, and that these articles are nothing more nor less, according to the rules of law, but an indictment,

(the house of representatives being the grand jury,) found against the respondent, who is governor of the state; and it strikes me that, following the analagies, they have not the power to amend their indictment. They can withdraw their bill, we admit, and send in a new one, as in a court of law. Perhaps it may be amended. If it can be, legally, we shall interpose no objection, only thus far, that the amendment shall be made upon proofs. We contend that they must have the evidence before them which authorizes them in law to make the amendment.

I will cite to the court another precedent in the case of Judge Chase, where the same course was pursued. It appears in the annals of the 8th Congress, 2d session, 1804 and 1805, page 803. The language there used is this:

"This report, accompanied by a great mass of printed docu-
"ments embracing various depositions taken before the com-
"mittee as well as at a distance, was made the order of the day
"for Monday following."

Now we do not consent that this amendment shall be made, and it was not so intended to so consent, without the necessary proof to warrant the amendment. If such proofs have been had and the amendment can be made, we shall have no objection; and when I speak of proof I mean proof before the committee of the house of representatives, which we contend, as matter of law, must be had before a new article can be brought in.

Mr. GRAHAM. Mr. Chief Justice, we understand the rule to be a little different from that laid down by the counsel for the respondent. This court is not bound, as we apprehend, by the rules of common law directing the proceedings to be taken by grand juries; and all that is meant, I apprehend, by the opinion of the attorney general of the United States which has been referred to is, that it would be a safe guide—it would afford something like analogy to refer to the proceedings of grand juries when articles of impeachment are about to be preferred.

There have been various commentaries on the constitution, and among others that of the illustrious jurist, Mr. Justice Story, and that, in addition to the article in the *Federalist* on the subject, gives us a flood of light in relation to what constitutes a court of impeachment and what should be its rules of action. Not anticipating that this objection would be raised, I did not bring the authority into court; but Judge Story says, if I remember his language correctly, that a court of impeachment is at liberty to act upon any rules that it may itself establish and that the analogies of the common law are not binding upon it, further than it thinks proper to adopt them as a part of the rules for the government of its proceedings. Indeed, we know that the common law was never adopted in the United States as a system, and so much of it as obtains now, in the jurisprudence of the United States, has been authenticated by statue adopting that much and more.

Sir, the proceeding here is one which makes certain charges against the respondent. Those charges are eight in number. Seven of them the managers are content shall remain as they are. The eighth they propose to change in the particular suggested, so that it shall not read that the offence there imputed was committed through the agency stated in the article as it originally stood, but through another agency. I rather liken this to that liberal doctrine of amendment which has been admitted in the statutory codes of all the states since the time the opinion of the attorney general of the United States, referred to by the learned counsel, was delivered, and that is of allowing anything to be amended at any time. Such a course is in accordance with the statutes of North Carolina. And while it has not been extended to allow indictments to be amended, this court is at perfect liberty to establish the principle in regard to matters of impeachment. There is no such formality required here in the proceedings of the house of representatives as is required in indictments. There is no reason why such an amendment should not be allowed. The amendment has the approbation of the house of representatives, just as the original article had

its approbation at the time that article was adopted. By some inadvertence, it was not discovered, until the testimony came to be taken, that the article was required to be changed, in order that the allegations should correspond with the proof.

The change might have been made in two different ways. One way would have been for the honorable managers to withdraw the eighth article, and instead of that article, to have adopted another, in the same language, but with the change in the name. That would be one mode. The other, which is equally valid, equally intelligible and equally capable of being comprehended by the court, is by requesting permission to amend the article by striking out the name of a certain person who is alleged to have been the agent in the commission of the offence and putting in the name of another. There is no reason why this charge shall not be amended—if you call it an amendment—as well as a declaration in a civil suit. There is no reason, I apprehend, why you should not amend charges of this kind, before the court where they have been presented, in the same manner you amend anything charged either as a tort or a contract alleged to have been broken by the defendant in a civil suit. These proceedings are of *actor* and *reus*. It is one party making a complaint and another making a defence; and what is desired is that he, who is called upon to defend, shall have a distinct notice of the manner in which the charges are made and of what is expected to be proved; and if you have that, you have all that is necessary for the purpose of this proceeding.

The amendment, it will be remembered, is simply an amendment alleging that instead of an unlawful disbursement of public money through Mr. Berry, that unlawful disbursement was made through Mr. Neathery. That amendment may as well be made here and now as at any other time. The house of representatives are not bound to send in the testimony upon which they find their charges. A case occurs to me in the history of England, which I have not before me, but which I can produce, where it was proposed to proceed in an impeachment upon a

message sent from the king to the house of commons. But the house took the objection that if they proceeded upon evidence of that kind, they surrendered that great right appertaining to representatives of England, in proceeding in any way they pleased to pursue criminals. The members of the house of representatives have a right, upon any testimony that satisfies them, to prefer articles of impeachment; and if they find there is anything erroneous which leads them to desire to put an article in a different form, they can consent to an amendment, and that amendment may be either by the common mode of striking out the whole article and inserting another article instead, or the more convenient mode of striking out something in the article and inserting something else in its stead; so that, as to the legality of it, this court is a law to itself on that subject. No precedents have been found that could ever restrain a court of impeachment in its proceeding. All that it requires to know, is to consult its own breast as to whether any injustice will be done by the course taken, and to act upon high principles of morality. That is the only obligation upon which it rests in relation to such a proceeding. Is there anything wrong in this, apprising the respondent distinctly of what is expected to be proved?—and is there any unmeaning formality? Some of these old proceedings at common law have existed for a long time, and it is very difficult, except for an antiquarian, to ascertain where they first originated. They have been conformed to rather because nobody thought it was necessary to inquire why they were adopted, than any reason that exists showing they were necessary; and in that jurisprudence, affecting matters *meum et tuum*, and between the state and the individual, administered by courts through judges, it has been thought proper and even essential, that they should conform to certain usages. But this court is not bound by any such artificial system, and may make the specifications conform to what the proof is expected to be, upon the request of the body who prefers a prosecution, in any way that it thinks proper.

We then respectfully suggest, that it is proper for this court to determine whether this amendment shall be made; and we submit it in such form as to show distinctly what it is desired to prove. The house of representatives have indicated its wish by distinctly declaring the amendment to be made, and this court has the power to make it. And we submit, in the next place, that this is a proper form in which to present the question of the amendment. If that be so, the only question is whether the house, in any form, has a right to amend its specification. I submit respectfully to the court, therefore, that the application made by the house of representatives is reasonable and ought to be granted.

Mr. BOYDEN. May it please the court, I think the learned counsel, when he says there is no reason why an amendment should not be allowed in state cases and indictments the same as in civil courts, is in error. There is a manifest difference between the two. Declarations in civil suits are filed without oath. Bills of indictment are found upon oath; and our court has already settled that point in a case, I believe, where a colored witness was sworn before the grand jury in finding a bill of indictment. The court quashed the indictment upon that ground, it appearing to them that improper testimony had been taken. Surely a man cannot be indicted without there is probable cause shown to a grand jury. It is the grand jury that makes the presentment; and it is the house of representatives here that has the right to impeach. The senate has no right to impeach and has no right to supply an article of impeachment. It possesses no such power under our constitution. The power to present an article of impeachment rests alone in the house of representatives. That body must frame the article and present it here. And this, as I understand it, is nothing more or less than asking this court to put in another allegation. I think it cannot be done. I think the true plan is the one suggested by the honorable gentleman, who has just addressed the court, to withdraw the article and then call upon the house of representatives to frame a new

charge and bring it in here. That seems to me to be a much better, and it strikes me it is the only proper and legal way to accomplish it. This is a new question to me and I am simply stating the manner in which it strikes me. The clause reads, "The house of representatives solely shall have the power of "impeachment." I say that this court—not the senate—sitting as a high court of impeachment has got no power to bring in another article, and that the only manner to effect the purpose desired is for the managers to move to withdraw the article sought to be amended, and then, if the testimony will warrant it, bring in a new article. That certainly would have a much better appearance.

Senator DARGAN. Mr. Chief Justice, I desire to offer the following order.

Mr. SPARROW. Will the senator withdraw the order for a moment as one of the counsel for the managers desires to address the court upon the pending question.

The request was acceded to.

Mr. BRAGG. Mr. Chief Justice and senators, I have no disposition whatever to prolong this discussion. It seems to me that the matter under consideration is a very simple one. In the first place, the amendment is one that is comparatively formal in its character, it being merely to change the name of an individual, and to allege that this disbursement was made through Mr. Neathery instead of through Mr. Berry.

The learned counsel on the part of the respondent admits that the house of representatives has a right to withdraw this article entirely and to send back another or others in its stead. That is conceded; and being conceded, the only question here is, whether that should be done, or whether this court now can allow an amendment which has been already adopted by the house of representatives. It seems to me that this is a dispute about a matter which is of no moment, and amounts to little or nothing; for the amendment which the house have sent in is virtually adopting another article. Then it comes

down simply to the form of doing it, whether the house can do it in this particular mode suggested.

The learned counsel is wrong in saying that this court "adopts" the amendment. It is adopted by the house of representatives; and all that body asks this court to do is to substitute the article as amended in the place of the article which was originally sent to this body, and that is all—nothing more and nothing less. Why, then, go through the formality of sending this article back to the house of representatives and having a new one substituted in place of it, when the course here suggested amounts to precisely the same thing?

The counsel has referred to proceedings before grand juries, and he has undertaken to assimilate the house of representatives, in this proceeding, to a grand jury in a proceeding on indictment. He contends that the action of the house of representatives is analagous to that of a grand jury, in finding a bill of indictment. He will find no authority for that in the constitution or in the laws regulating proceedings on impeachment. He speaks about evidence to be submitted to the house of reprerentatives as a condition precedent to that body presenting articles of impeachment. How does the counsel know that evidence has not been submitted? This court is bound to presume that all these articles were found upon evidence duly presented. He has no right to show they were not so found.

Mr. BOYDEN. I did not intimate that they were not. I suppose they were, and I take it for granted they were found upon evidence.

Mr. BRAGG. So upon this amendment: this court is to take it for granted that it was adopted upon evidence appearing before the house that there was an error, and that they now seek to correct the article in the particular stated. We have the right to presume that that evidence was submitted, and that the house of representatives acted upon that evidence, and hence they send the request that the change be made.

The learned counsel spoke about the power of a court of im

peachment to quash an article presented by the house of representatives, because it was found upon insufficient testimony, in analogy to the power of a court of common law to quash a bill of indictment when it regards the action of a grand jury to have been upon insufficient testimony. I think he can show no authority for holding that this court has any such power. This court has no authority whatever, either by the constitution or by the laws, to quash any article that may be sent here as the basis of a trial, either for the reason that the article was found upon insufficient evidence or any other reason. The gentleman falls into these errors by undertaking to follow out analogies and to show that this senate, sitting as a court of impeachment, is analogous to an ordinary court of common law for the trial of criminal offenses. The gentleman admits that the house of representatives have a right to amend this article, but he says the amendment should be made in a particular way. We submit to the court that the way proposed is appropriate, though the other one would be proper also; but this way is equally appropriate and it certainly is more convenient.

The question simply comes before the court, whether they will allow this article to be changed in the particular stated when the change is made by the vote of the House of Representatives which is the impeaching body. I submit that the court will allow the change.

The CHIEF JUSTICE. The impeachment act makes it incumbent upon the presiding officer "to decide in the first instance without a division, all questions of evidence and incidental questions, but the same shall, on the demand of one-fifth of the members present, be decided by the yeas and nays." This I consider to be an "incidental" question. It is the opinion of the presiding officer that the senate have the power to allow the amendment to be made at the instance of the house of representatives. I consider it to be the same as if the foreman of a grand jury, attended by the whole grand jury, came into court and requested the judge to allow them to strike out one name and insert another. Unless a division is called

for, that will be taken to be the rule, that the senate have the power to allow the amendment. The next question will be, will the senate allow the amendment to be made, and that is a matter for the body to decide. Is the court ready for the question?

Senator DARGAN offered the following order:

"*Ordered*, That the amendment to the eighth article of "impeachment requested by the house of representatives be "allowed."

The CHIEF JUSTICE put the question on the order offered by Senator Dargan, and it was decided in the affirmative.

Mr. McCORKLE. Mr. Chief Justice, the amendment which has just been made, by permission of the senate, will materially affect the answer to the article. Senators who have read the article first presented by the house of representatives and the answer thereto by the respondent, will have seen that the answer is a general denial of the allegations of that article. Under the amendment which has just been permitted, it will become necessary for the respondent to frame a specific answer to that article, and it may be that it will entirely change the character of the answer. We therefore ask that we be allowed until Thursday to file our answer. Two of the counsel for the respondent are not present to-day, and therefore we will not have the benefit of their counsel to aid in framing the answer unless we have an adjournment. That is the reason why we ask that further proceedings be adjourned until Thursday next.

Mr. SPARROW. On behalf of the managers, I feel authorized to say to the counsel for the respondent that we are willing to consent to an adjournment until Wednesday. We very much desire that there shall be no unnecessary delay in the prosecution of this trial. We desire to deal fairly and courteously with the other side, and we hope that by Wednesday it will suit their purpose to conform their answer to the article as amended. We consent to an adjournment until that time, which we think will be long enough. This suggestion which I

have made meets with the approval of the managers. We do not speak for the senate.

Senator GRAHAM, of Alamance, offered the following order:

Ordered, That the respondent be allowed until 12 o'clock on Wednesday, the 1st of February, 1871, to answer the eighth article.

Mr. MOORE moved to amend the order by inserting the word Thursday in lieu of the word Wednesday, and on which motion he called for the yeas and nays.

A sufficient number seconding the call, the yeas and nays were ordered.

The CHIEF JUSTICE put the question on the amendment offered by Mr. Moore, and it was decided in the negative.

Those who voted in the affirmative were:

Messrs. Barnett, Battle, Beasley, Bellamy, Brogden, Cook, Cowles, Eppes, Flythe, Hawkins, Lassiter, Latham, Lehman, Linney, McCotter, Moore, Murphy, Olds, Price—19.

Those who voted in the negative were:

Messrs. Adams, Albright, Allen, Brown, Council, Currie, Dargan, Flemming, Gilmer, Graham of Alamance, Graham of Orange, Jones, Ledbetter, Love, Mauney, McClammy, Merrimon, Norment, Robbins of Davidson, Robbins of Rowan, Skinner, Speed, Troy, Waddell, Warren, Whiteside, Worth —27.

The CHIEF JUSTICE then put the question on the resolution of Senator Graham, of Alamance, and it was decided in the affirmative.

On motion of Mr. Gilmer, the court adjourned to meet on Wednesday, at 12 o'clock.

FIFTH DAY.

SENATE CHAMBER, Feb. 1, 1871.

The COURT met at 12 o'clock, M., pursuant to adjournment, Honorable R. M. Pearson, Chief Justice of the Supreme Court, in the chair.

The proceedings were opened by proclamation made in due form by the doorkeeper.

The CLERK proceeded to call the roll of senators, when a quorum was found to be present.

Senator GRAHAM, of Orange. Mr. Chief Justice, it has been understood that the point would be raised that the proper time for the swearing in of all senators would be after issue joined. I suggest that it would be as well to postpone the swearing of Senator Edwards until that time.

Senator ROBBINS, of Rowan. Mr Chief Justice, I do not understand issue to be entirely joined as yet, as there is still some pleadings in the course of preparation on either side. An answer is to be made to the amended article, and there will probably come in a replication to that. The point raised by the senator from Orange, will be in order after issue has been completely joined. Senator Edwards, who has been recently admitted to his seat, has not been sworn, and I submit that he be now sworn and that the point be raised after issue joined when all the senators shall be finally sworn.

The CHIEF JUSTICE. I think the senator named should now be sworn. He will come forward.

Mr. McCORKLE. Mr. Chief Justice, we desire, on behalf of the respondent, to interpose a challenge before Mr. Edwards shall be sworn in. We have reduced the challenge to writing, and ask that it be read by the clerk.

The CLERK proceeded to read the challenge as follows:

The counsel for the respondent challenge the right of Hon. L. C. Edwards to sit as a member of this, a *court* of impeach-

ment, upon the ground that he was not a member thereof at the organization, and cannot be now admitted to participate in its deliberations, and beg to be heard upon the question.

(Signed,) R. C. BADGER,
NATHANIEL BOYDEN,
EDWARD CONNIGLAND,
J. M. McCORKLE,
W. N. H. SMITH.

CHIEF JUSTICE. The presiding officer is of the opinion that the counsel have a right to be heard on the motion submitted.

Mr. CONIGLAND. Mr. Chief Justice, I have but a few remarks to offer in support of our right to challenge as herein expressed. I take it to be our duty "to challenge the right of "the Hon. L. C. Edwards to sit as a member of this, the court "of impeachment, on the ground that he was not a member "thereof at its organization."

Sir, the question arises whether a court can open to admit new members to participate in its deliberations. If it can open at one stage of its sittings, it can open at any stage of its sittings; and we submit that under the constitution of North Carolina, this court, sitting as a court for the trial of an impeachment, cannot open to admit new members who were not members thereof at its organization.

I know, sir, that a great deal of learning may be exhibited upon this point. We may be referred to the impeachment of Warren Hastings and to impeachments that have occurred before the senate of the United States. And that we have no precedent and no authority in this case, is due to the fact that our constitution is different not only from the British constitution and the constitution of the United States, but different from the old constitution of our own state. The constitution of the United States uses this language:

"The senate shall have the sole power to try all impeach-"ments. When sitting for that purpose, they shall be on oath "or affirmation. When the president of the United States is

"tried, the chief justice shall preside; and no person shall be "convicted without the concurrence of two-thirds of the mem-"bers present."

The constitution of North Carolina says expressly:

"The judicial power of the state shall be vested in a court "for the trial of impeachments, a supreme court, superior court, "courts of justices of the peace, and special courts."

By our organic law the senate is invested with a judicial character and this body under it becomes a court and nothing else. It organizes it as a superior court is organized. These members are sworn, and when they are sworn they constitute a court known to the constitution of North Carolina for the time being. They are no longer the senate of the state of North Carolina, sitting in that capacity, but they are "the court for the trial of impeachments,"—expressly so declared by the organic law; and sir, it is taking it away from all precedents that have heretofore occurred, because no one of them has that express provision that we have in our constitution. "Courts for the trial of impeachments," "the supreme court," "the superior courts," and "courts of justices of peace and special courts," are all put on precisely the same footing. Sir, if a court can admit new members, who were not members at the time of its organization, what is to prevent it from bing packed? Suppose, sir, an impeachment were pending and a motion should be made in the senate, in its legislative capacity, that the inquiry should be entered into whether certain members were qualified tc hold their seats under the fourteenth amendment, and it should be decided to throw out five or six or seven or eight senators on the ground that they labored under the disabilities of that amendment, what becomes of our court of impeachment? If these things are to be allowed, what hope is there of an impartial trial?

The question was raised by Mr. Butler in behalf of the managers on the trial of Andrew Jhonson, and I take the liberty of reading a portion of his remarks, to be found on page 89, volume 1, of the reported proceedings of that trial;

"I trust, Mr. President and Senators, I may be pardoned for "making some suggestions upon these topics, because to us it "seems these are questions not of forms but of substance. If "this body here is a court, in any manner as contradistinguished "from the senate, then we agree that many, if not all the "analogies of the procedures of courts must obtain; that the "common law incidents of a trial in courts must have place; "that you may be bound in your proceedings and adjudication "by the rules and precedents of the common or statue law; "that the interest, bias or preconcieved opinions or affinities to "the party, of the judges, may be open to enquiry and even "rules of order, and precedents in court should have effect; "that the managers of the house of representatives must con-"form to those rules, as they would be applicable to public or "private prosecutors of crime in courts, and that the accused "may claim the benefit of the rule in criminal cases and he "may only be convicted when the evidence makes the fact "clear beyond reasonable doubt, instead of by a proponderance 'of the evidence."

No one, sir, could contend more strongly for the position that the senate of the United States on the trial of Andrew Johnson was not sitting as a court; and it was upon that express ground that the managers insisted that the senate could open to admit new members and that none of the incidents of a court attended it. All this ground, however, is swept away by our constitution which expressly declares that "the judicial "power of the state shall consist of a court for the trial of impeachments," &c., and when that court is once organized it becomes a court of the state of North Carolina under its constitution, and it cannot be opened for the purpose of admitting as members persons who were not members at the time of its organization. It might as well be said that a judge of the superior court who had commenced the trial of a cause could be displaced by another to finish the trial—a proposition which would shock all our notions of the manner in which the courts of North Carolina should be organized and conducted.

I submit, sir, therefore, that the challenge is properly taken and ought to be allowed.

Mr. GRAHAM. Mr. Chief Justice and Senators, we contend that the challenge interposed on behalf of the respondent ought not to be allowed. The right of a senator, as such, to sit in this court is unquestionable, and the only question that can be entertained by this body is whether the person taking his seat as a member of this court is a senator from a district of the state of North Carolina. If he is that, and his peers have adjudged him such, his right to exercise the functions of a judge of this court are as perfect as is the right of those who appeared here on the first day of the sessions of this court. It is not true, as I apprehend, that it is necessary that members of a court shall be uniformly present from the beginning to the end of every proceeding, in order to entitle them to participate in the proceedings or to enable them to escape, if they are disposed to do so, from the responsibility of such proceeding. The sole question to be presented is whether this is a senate, and about that I suppose there can be no doubt. The next question is whether the honorable gentleman referred to in this challenge is a senator, and of that I presume there is as little doubt, for he seems to occupy his seat here, and, so far as we know, by the permission and approbation of his peers; and if he is a senator then he is a judge in this court as much as the gentleman who ordinarily presides over the senate is a judge of this court.

Sir, it is not infrequent that courts consist of numerous members. The supreme court of the United States consists I believe of nine judges, and it is not unfrequently the case that one of their number is absent for a day or a part of a day; and yet, sir, his right to participate in the judgment of the court and to vote on all questions arising in its proceeding, is as perfect as though he were there during the whole time. So it was in the case of inferior courts in North Carolina, in former times consisting of magistrates; any magistrate, whether he was present at the beginning of the case and took his seat, or whether he

came in at any time during its progress had the power and the right to act and act upon the subject under consideration. So it is with every court constituted of more than one person. Necessarily some one may be absent for convenience or necessity for a short period, and yet he is as competent as any of the others to have a voice in the determination.

And, sir, the inconveniences to which the honorable gentleman refers are not matters which a court can consider. It may be that like other human institutions this court of impeachment is not guarded by all the securities that may be desired; but, sir, such as it is it must stand. There is no right for any party to make a challenge—no right to challenge to the favor and no right to challenge for any irregularity in the election, for that has been settled before by the members of the senate. There is no right to challenge for any such cause as that, much less a right to challenge because a gentleman has been kept out of his place during all the preceding sessions of the court until the present time. If he now shows as clear a title to a seat in this body as any of his peers, there is no ground of challenge. He cannot avoid the responsibility of participating in the trial, nor can those concerned in it exclude him from the right, which his constituents have, to be represented in the determination of judicial questions that arise, precisely as they have to be represented by him in the determination of legislative questions.

Looking into the precedents as I have done since I came into this case (for I have given but little attention to the subject previously) I find that men have been permitted to sit and have been required to sit upon the trials of their own relatives. A peer has been compelled to sit upon the trial of his daughter. And I find that in such cases, where near relatives have been under trial, members of the court could not escape the responsibility of sitting. If he is a peer he must perform his judicial duty as such, as well as his legislative duty. If a man is a senator he must perform his judicial duty as a senator, as well as his legislative duty as a senator.

The gentleman says that no precedent can be found, for he position he claims, because our constitution differs from all others. I do not see that it differs at all. It says that "the "judicial power of the state shall be vested in a court of im-"peachment" and other courts. That expresses no more than is expressed in the constitution of the United States when it says that the House of Representatives shall have the sole power of impeachment, and that "the senate shall have the "sole power to try all impeachments." And the question comes back, who make up the senate and who is, and what is, the title of the individual against whom the challenge is interposed? If any such objection could be substantially made, it should be an objection to his taking his seat as a senator; but having taken his seat as a senator, his rights are the same as those of any other member of the body.

With all the research which the gentleman has made, I do not see that any authority is produced to support the proposition which he has submitted. He shows no precedent either in England or in America where any such objection was allowed to prevail. The argument of Mr. Butler and the elaborate brief from the pen of Mr. Lawrence, of Ohio, in the impeachment of president Johnson—the most elaborate treatise upon that subject which has ever been written in this country at least,—both allow that a senator may take his seat at any time when his title is shown—that he may go into the proceedings at any stage of the progress of the trial; and that, although he had not heard a word of evidence, he would be entitled to vote, and be required to vote, on the question of the guilt or innocence of the accused, and that that being a right pertaining to his office, he can no more evade it or be excluded from it than he can evade or be excluded from any other right or duty.

So far from there being any precedent in the argument of Mr. Butler to which reference is made, it shows that there cannot be any such thing as a challenge. In that argument he throws out insinuations calculated to embarrass certain members of the senate of the United States—that they had expressed

opinions favorable to the respondent then on trial. But he concedes that anything of that nature is altogether out of the question whether such members shall be entitled to exercise their functions as senators and members of the court.

If any objection of this kind to a senator was intended to be taken, it should have been taken before the committee on elections or before the senate, for the gentleman challenged is a senator now, and a judge, for if he is one he is the other, because the title in the one case determines the title in the other.

This idea is recognized by the legislature in the act which they passed in reference to proceedings of impeachment, as will be found by reference to the act itself which, much to our convenience, has been printed in connection with the rules of the court. The tenth section says: "At the time and place "appointed and before the commencement of the trial the pre-"siding officer of the senate shall administer to each member "then present and to other members *as they may appear*, an "oath or affirmation," &c.

According to the strictness contended for on the other side, if a gentleman is not here at eleven o'clock, or whatever is the time fixed when senators are to be sworn, he can never be sworn afterwards, because if there were a quorum present there was a court constituted. I say that that enactment of the legislature is a recognition of the doctrine for which I contend. There is also a recognition of the same idea by the senate in the rules which they have prescribed for the government of these proceedings. In their first rule it is provided that "before pro "ceeding to the consideration of the articles of impeachment, "the presiding officer shall administer to the members of the "senate then present and to the other members *as they shall* "*appear*, the following oath." So that, whether they appear that day, or the next day, or the next week, or the fourth week, they have a right to be sworn and come into this court as the representatives of their constituents, numbering I believe some twenty thousand people for each senator. We have a million of inhabitants in the state and there are fifty members of this body and each member comes here as the representative of a

body of the people who, through their voice publicly expressed, have selected him to represent them in judicial matters as well as in matters legislative. And if any senator is detained at home by indisposition or any other cause, so that he cannot get here when the court is constituted, when he does come his powers are in no way abridged. If he comes here the fourth week of the session and takes the necessary oath he is entitled to the same privileges as any other member of the body who has been here before him.

I submit, therefore, that it is not only so in reason, but it is so by authority, as far as there is any authority upon the subject, and is so by analogy; for, sir, if there cannot be a challenge to the favor or a challenge upon any ground of personal prejudice or disqualification, there surely cannot be a challenge that a member did not happen to be in the chamber at the time when the court was first constituted. And, sir, while the subject is under discussion, the thought occurs to me that it was quite unnecessary to have sworn the members of this body at the time of these first proceedings. I find nothing in the law which requires it. I have not a copy of the constitution before me, but there are but two articles applicable to it, and they say nothing about the members of the body being sworn. The law regulating proceedings of impeachments says nothing about their being sworn until the tenth section. The ninth section says that "when issue is joined in the trial of an im-"peachment, the court shall fix the time and place for the trial "therefor," and then it is in the tenth section that, for the first time, we hear that it is necessary for sanators to take any oath at all as judges. As I apprehend, it was presumed by the legislature which enacted this law that, by the first oath which they took, when they qualified as members of this body, they might act in constituting the court—convert a legislative tribunal into a judicial one, and receive the articles of impeachment, the answer to the same, and the replication to the answer. Having done that, and time for the trial being agreed upon, the law requires that there shall be an oath taken by the members of the court. This senator who is objected to is here in time, even

if the challenge could be allowed, to the effect that there is a change in the incumbent is made by admitting him and excluding another, because senators are not formally sworn in as members of the court until issue is joined. If a vacancy had occurred by death, the objection would have been the same that the people of the district had lost their right to have a member of the court, because their senator, who was present when the court was constituted, had died, and nobody could be elected to fill his place. No, sir, in these high functions of a legislator and in these high duties of a court of impeachment, whenever the proper man appears clothed with the authority of a senator, he is clothed also with the authority of a judge of this court.

Senator GRAHAM, of Orange. Mr. Chief Justice, I desire to state, as a matter of order, that each side being entitled to a half hour in an argument on the question, if the whole time is not consumed in their argument, they can occupy the residue in reply.

Mr. BOYDEN. Mr. Chief Justice, it is not denied upon the part of the respondent that the senate of the United States sitting as a court can admit members after the court has been organized. That has been done repeatedly. We place our challenge upon a totally distinct foundation. We insist, and it will be seen on the trial of Mr. Johnson that it was insisted on behalf of the managers at great length, that the senate of the United States was not a court, but that it was the senate of the United States, with the chief justice of the supreme court of the United States presiding, which was trying President Johnson. It was admitted on behalf of the managers on that trial by their chairman, that if the senate of the United States were a court, most if not all the rules applicable to courts of law would apply. I wish to read a little more distinctly what manager Butler said on that subject. It will be found on page 89, volume 1, of the trial

"If this body here is a court in any manner, as contradis-
"tinguished from the senate, then we agree that many, if not
"all the anologies of the procedures of courts must obtain;

"that the common law incidents of a trial in court must have "place; that you may be bound in your proceedings and adju- "dication by the rules and precedents of the common or statute "law; that the interest, bias or preconceived opinions or "affinities to the party, of the judges, may be open to enquiry, "and even the rules of order and precedents in court should "have effect; that the managers of the house of representa- "tives must conform to those rules as they would be applicable "to public or private prosecutors of crime in courts, and that "the accused may claim the benefit of the rule in criminal "cases, that he may only be convicted when the evidence "makes the fact clear beyond reasonable doubt, instead of by "a preponderance of the evidence.

"We claim and respectfully insist that this tribunal has "none of the attributes of a judicial court as they are commonly "received and understood. Of course this question must be "largely determined by the express provisions of the constitu- "tion, and in it there is no word, as is well known to you, sen- "ators, which gives the slightest coloring to the idea that this "is a court, save that in the trial of this particular respondent "the chief justice of the supreme court must preside."

Mr. Chief Justice, we admit that the doctrine is well settled as to the senate of the United States upon a question of impeachment, that senators can come in at any time and be sworn in at any time and vote, even if they do not attend until the vote is to be taken. What we contend for is, that under our constitution this is a high court of impeachment. On the trial of Mr. Johnson we find that distinctly admitted by the managers, that if the senate of the United States were declared to be a "court" of impeachment by the constitution of the United States, then all, or nearly all, the rules obtaining in courts of law must govern. It is admitted that the party would have a right to a challenge on the ground of bias as he would to challenge a juror; it is admitted that the court should be governed by the rule that the person charged could not be convicted except

a case was made out beyond a reasonable doubt. They start out with that.

And, sir, how is this met? They say that in England in the house of lords, men have been compelled to sit in judgment upon their children! Great God! is that a precedent for the senate of North Carolina? It is to avoid the occurrence of such things,—such terrible situations, such outrages upon every feeling of humanity as to make a man sit in judgment and vote upon the guilt of his own children, that our constitution makes this body a "court of impeachment," and being a "court," each party is entitled to all the rights and privileges which he would be entitled to in any court under the statutes of our country. That is the distinction, sir. Gentlemen need not quote any precedents. We admit that the records of the senate of the United States are full of them. But, sir, when the managers admitted on that important trial that all those rules upon which we now insist would apply in a "court," and when we show that this is a "court" in terms, we say that all these rules and analagies follow. That is our view. That was admitted to be the law on the trial of president Johnson by the prosecutors. We admit that a senator on that trial could be admitted at any time prior to the vote being taken to come in and record his vote. But we deny that such a rule applies to this court. We say that we have all the rights here which we would have in an ordinary court according to the common law and statute law of the land.

I desire to state also, sir, that when this trial commenced, the applicant now asking to be sworn in, was not a senator and it had not then been determined that he had any rights as a senator. Another gentleman was then occupying his seat who had been sworn in as a member of this court. That gentleman has been ousted and, sir, where this thing may end no body can tell if this course is to be pursued.

Mr. MERRIMON. Mr. Chief Justice, it seems to me that this challenge which has been interposed proceeds upon a false notion of the nature, power and purposes of this court. It goes upon the idea that all courts are governed by

like rules and that they are organized to accomplish the same end. There is no authority in principle or precedents for any such suggestion. One court has one nature, one character, one purpose and one method of procedure; another court is entirely different in these respects. We have our ordinary superior courts in this state. They proceed under the organic law of the state in a particular way, and their object is to effect a particular purpose according to the constitution and the laws of the state. We then have commissioners' courts under our present organic law. They have different powers and a different jurisdiction, and they proceed in an entirely different way. Again, we have courtsmartial authorized by law, and they have certain powers and they are intended to effectuate certain purposes, and they proceed in a way entirely different from our superior and commissioners' courts. And while I am willing to concede that we have "a court for the trial of impeachments"—it is so called,—it has a peculiar jurisdiction and a peculiar nature, and is intended to accomplish a particular purpose; and its method of procedure under the law of the state is entirely different from the method of procedure prescribed by that law for the superior courts. And while the object contemplated by it is entirely different and the method of procedure is different, and there are certain rules of evidence and, there may be, rules of law applicable to every single tribunal I have mentioned, there are certain other rules of law, and rules of evidence which would not apply to each of the courts in common.

The fact that this is called a "court for the trial of impeachments" amounts to very little. Suppose it was called in our constitution "a commission for the trial of impeachments," it could equally as well be contended that it was a judicial tribunal, for it would be to all intents and purposes. And if it were called in the constitution a "commission for the trial of impeachments," would the character of the body be at all changed? Is it not manifest that the rules of law would apply the same then as they apply now? We have heard of

"military commissions" to try offenders; but because they are called military commissions will any one doubt that they are a judicial tribunal, exercising judicial power, and that they proceed according to law enacted for the purpose of creating and governing them? No body doubts it. So that this challenge is supported by an argument based upon words rather than an argument based upon principle. The fact that the word "court" is used in our constitution does not change the character of the court or its purposes.

Now our organic law provides in terms that the "court for the trial of impeachments" shall be the senate. "Trial of impeachments"—what does that imply? It means that the constitution provides that certain classes of officers in the state shall be amenable to the tribunal provided by the organic law of the state to answer for their official misconduct or their official incompetency. That is what it means. It means that they may be impeached for official turpitude or official incompetency. The word "impeachment," has a significance. It has a legal force; and it implies that whoever is impeached shall be tried—that is, that somebody in behalf of the public shall make a charge against the officer and that the officer shall have an opportunity to be heard. And whenever it is said that there shall be a trial of an impeachment, it is impled that there shall be a judicial tribunal to hear what the managers have to say on the one side, and what the accused shall have say by way of defence on the other side; and whenever that is so, whether you call the tribunal a "court of impeachment" or whether you call it a "commission of impeachment," whatever you may call it, it is a trial.

Therefore, I say that this challenge proceeds upon a false notion as to the character of this court. It is a court so constituted that if a senator is present at the time the trial is begun he shall be allowed to sit and participate in the proceedings to their close; but it is also provided, not in terms in our constitution, but in the common law of courts of impeachment, (for there is such a common law, gathered not only from the de-

cisions of courts like this in England, but in this country also,) that if one of the members of the court shall resign and another shall take his place, he shall come in and be one of the tryers down to the last moment; and that is the rule of law applicable to tribunals to try impeachments whether called "a court of impeachment" or "the senate of the United States."

A strenuous effort has been made to liken this court to an ordinary judicial tribunal. That, it seems to me, is a false notion. The object of this court is not to convict an accused party of any particular crime with the view to impose the ordinary punishment provided by law for the crime, but the object is simply inquisitorial. The trial is, in many of its features, political. It might be otherwise, however, as in a case where an officer should be impeached because of incompetency. But this is a political trial, to a very great extent, and is inquisitorial in its character, the object being to ascertain whether the accused by reason of the official misconduct charged upon him is fit to longer exercise the officer of governor or to exercise any office in the state. The purpose is not to try and convict the accused of an offence he has committed as a man, but to ascertain whether he has committed any offence in his official capacity that disqualifies or unfits him to hold the office of which he is the present incumbent. Hence, there is an express provision in the constitution that the judgment of this court shall not go further than to remove the person convicted from office, provided he shall not hold any other office in the state, and it expressly provides that, for the very offences charged in these articles, he may be charged before the ordinary tribunals of the country and convicted and punished according to law.

I call your attention to this further provision of the constitution, "that no person shall be convicted without the concur-"rence of two-thirds of the senators present." Present when? Present at the time the judgment is pronounced;—present before the court closes;—present at the time the vote is being taken; and whether you call the suit a *prosecution* or whatever

else, every senator present at the moment the vote is being taken shall vote as the representative of his constituency as part and parcel of the senate to determine whether or not the accused is guilty of the official turpitude and misconduct charged upon him. The question of interest cannot be raised by reason of the very nature of a court of impeachment, and it never was known to be raised, or if raised it was never sustained in England or in this country. (On that point I will state some authorities in a moment.) In the case of the impeachment of President Johnson, his own son-in-law was one of his tryers, and there is a parallel case in this very body now. Would anybody pretend that the honorable senator representing the Wake district could be challenged because of his affinity with the accused? It is absurd to talk about it. A question of interest does not arise. And in reply to the honorable gentleman who last addressed the court, [Mr. Boyden,] I say that if the father of the accused were here it would be his duty to vote upon this issue.

I beg leave to call your attention to the provision in the constitution of the United States which says: "The senate "shall have the sole power to try all impeachments." What is the reason that it is not the same in substance as the provision in our constitution, except that we designate the senate as a "court?" It is a tribunal for the trial of impeachments. Ours, also, is a tribunal for the trial of impeachments. The senate of the United States and this court are bound by the rules of law, so far as they are applicable, to trials of this kind. Unless some provision is made to the contrary there may be many rules of law and of evidence that will apply to this court. But this court has the power, just as much as the senate of the United States has, to prescribe rules and to limit and change the ordinary rules of law that would apply except such provision were mode at the trial, whether you call the tribunal a "court" or "a military commission" or a "commission of impeachments" or any name which may be mentioned. Any tribunal that tries impeachments does exercise judicial powers

just as this court does, and the same rules apply unless they are modified by some rule prescribed by itself; hence the distinguished manager on the trial of President Johnson said that the senate was the law unto itself; and so it is if it shall see fit to exercise that power.

I beg leave to bring to your attention these strong cases, both from the English and American records. I read from the opening of the managers in the case of President Johnson:

"Nearly five hundred years ago, in 1388, the house of lords "resolved, in the case of Belknap and the other judges, that "these matters, when brought before them, shall be discussed "and adjudged, by the course of parliament, and not by the "civil law, nor by the common law of the land used in other "inferior courts.

"And that resolution, which was in contravention of the "opinion of all the judges of England, and against the remon-"strance of Richard II, remains the unquestioned law of Eng-"land to this day.

"Another determining quality of this tribunal, distinguish-"ing it from a court and the analogies of ordinary legal pro-"ceedings, and showing that it is a senate only, is that there "can be no right of challenge by either party to any of its mem-"bers for favor, or malice, affinity, or interest."

I may remark here—what must be manifest to every lawyer, that Mr. Manager Butler conceded there what he did not need to concede. He said that if the senate was a court it was bound like other courts. That was conceding too much. It was bound like other courts, so far as the rules of law were applicable to courts of impeachment, and only to that extent. But I read further.

"This has been held from the earliest times in parliament "even when that was the high court of judicature of the realm "sitting to punish all crimes against the peace.

"In the case of the Duke of Somerset, [Howell's State Trials "p. 521] as early as 1551, it was held that the Duke of Northum-"berland and the Marquis of Northampton and the Earl of

"Pembroke, for an attempt upon whose lives Somerset was "on trial, should sit in judgment upon him against the objec- "tion of the accused because" 'a peer of the realm might not "be challenged.'

"Again, the Duke of Northumberland, [ibid., State Trials, "p. 765] Marquis of Northampton and Earl of Warwick, *being* "on trial for their lives, A. D. 1553, before the court of "the Lord High Steward of England, one of the prisoners "inquired whether any such persons as were equally cul- "pable in that crime, and those by whose letters and command- "ments he was directed in all his doings, might be his judges "or pass upon his trial at his death. It was answered that, 'If "'any were as deeply to be touched as himself in that case, yet "'as long as no attainder of record were against them, they "'were nevertheless persons able in the law to pass upon any "'trial, and not to be challenged therefor, but at the prince's "'pleasure.'"

"Again on the trial of Earls of Essex and Southampton "[ibid., 1 State Trials, p. 1325] for high treason, before all the "justices of England, A. D. 1600, the Earl of Essex desired to "know of my Lord Chief Justice whether he might challenge "any of the peers or no. Whereunto the Lord Chief Justice "answered 'No.'"

"Again, in Lord Audley's case (ibid., State Trials, page 402, "A. D. 1631,) it was questioned whether a peer might chal- "lenge his peers as in the case of common jurats. It was "answered by all the judges, after consultation, 'he might not.'"

"This case is of more value because it was an indictment for "being accessory to rape upon his own wife, and had no po- "litical influence in it whatever. The same point was ruled in "the Countess of Essex's case on trial for treason."

Senator GRAHAM, of Orange. Mr. Chief Justice, I will state as a question of order that the time allotted by the rules to the managers is up.

Mr. MERRIMON. I would like to state, if I am permitted, the American cases which are also, in my judgment, very strong,

The CHIEF JUSTICE. The time has expired and unless the senate extend it, the counsel will have to close his remarks.

Senator GRAHAM, of Orange. I hope the Senate will grant the indulgence.

Senator LEHMAN. I move that the time be extended for ten minutes.

The CHIEF JUSTICE put the question on the motion of Senator Lehman, and it was decided in the affirmative.

Mr. MERRIMON. Mr. Chief Justice, I will now read with reference to the American precedents.

"We have abundant authority also on this point in our own "country.

"In the case of Judge Pickering, who was tried in March "1804 for drunkenness in office, although undefended in form, "yet he had all his rights preserved.

"This trial being postponed a session, three senators— "Samuel Smith of Maryland, Israel Smith of Vermont, and "John Smith of New York—who had all been members of the "house of representatives, and there voted in favor of impeach- "ing Judge Pickering, were senators when his trial came off.

"Mr. Smith of New York, raised the question, by asking to "be excused from voting. Mr. Smith of Maryland, declared "he would not be influenced from his duty by any false deli- "cacy, that he, for his part, felt no delicacy upon the subject; "the vote he had given in the other house to impeach Judge "Pickering would have no influence upon him in the court; "his constituents had a right to his vote, and he would not by "any act of his deprive or consent to deprive them of that "right, but would claim and exercise it upon this as upon "every other question that might be submitted to the senate "whilst he had the honor of a seat.

"A vote being had upon the question, it was determined "that these gentlemen should sit and vote on the trial. This "passed in the affirmative by a vote of 19 to 7, and all the "gentlemen sat and voted on every question during the trial.

"On the trial of Samuel Chase before the senate of the

"United States, no challenge was attempted, although the case "was decided by an almost strict party vote in high party "times, and doubtless many of the senators had formed and "expressed opinions upon his conduct."

"That arbitrary judge, but learned lawyer, knew too much to "attempt any such futile movement as a challenge to a senator. "Certain it is that the proprieties of the occasion were not "marred by the worse than anamolous proceeding of the chal-"lenge of one senator to another, especially before the defen-"dant had appeared.

"Nor did the managers exercise the right of challenge "although senators Smith and Mitchell, of New York, were "members of the senate on the trial and voted *not guilty* on "every article, who had been members of the House when the "articles were found, and had there voted steadily against the whole proceeding.

"Judge Peck's case, which was tried in 1831, affords another "instance in point.

"The conduct of Judge Peck had been the subject of much "animadversion and comment by the public and had been for "four years pending before the congress of the United States "before it finally came to trial. It was not possible but that "many of the senate had both formed and expressed opinions "upon Peck's proceedings, and yet it never occurred to that "good lawyer to make objection to his triers. Nor did the "managers challenge, although Webster, of Massachusetts, was "a member of the committee of the house of representatives, "to whom the petition for impeachment was referred, and "which, after examination, reported thereon, 'leave to with-"draw,' and Sprague, of Maine, voted against the proceedings "in the house, while Livingston, of Louisiana, voted for them. "All of these gentlemen sat upon the trial and voted as they "did in the house.

"A very remarkable and instructive case was that of Judge "Addison, of Pennsylvania, in 1804. There, after the articles "of impeachment was framed, the trial was postponed to

"another session of the legisture. Meanwhile three mem-
"bers of the house of representatives who had voted for the
"articles of impeachment were elected to the senate, and
"became the triers of the articles of impeachment of which
"they had solemnly voted the respondent to be guilty. To
"their sitting on the trial, Judge Addison objected, but af-
"ter an exhaustive argument his objection was overruled, 17
"to 6. Two of the minority were the gentlemen who had
"voted him guilty, and who themselves objected to sitting on
'the trial.

"Thus stands the case upon authority."

I close by saying what I stated at the outset, that this challenge proceeds, and I say it with all respect to the other side, upon a false notion of the nature, powers and purposes of this court.

Mr. BOYDEN. Can I make a brief reply?

The CHIEF JUSTICE. I understood the motion submitted by the gentleman from Craven, (Mr. Lehman,) to extend the time of the discussion indefinitely.

Senator GILMER. I submit as a question of order that the motion was to extend the time for ten minutes.

Senator GRAHAM, of Orange. I understand that the counsel for the respondent have still seven minutes left, without a motion.

Mr. CONIGLAND. Mr. Chief Justice, the point which we have made, it is not necessary for me to say, was not made with any other than a *bona fide* purpose. I may be permitted further to say, that no one can have a higher regard for the honorable senator (Mr. Edwards) to whom we object, than myself. But, sir, we place our objection upon what we believe to be tenable grounds, and we believe further, sir, that we would be derelict in our duty to the respondent if we failed to make the challenge. We make it because we desire this trial may be conducted according to the laws of North Carolina and that the scales of justice may be held evenly between the impeaching body and the accused.

Now, sir, as I said when I addressed the court before, every precedent which has been quoted on the part of the managers is entirely without authority here. The learned counsel has stated that a peer of Great Britain cannot be challenged. I answer by saying that he cannot be sworn as a member of a court of impeachment, or any other court, but he is put upon his honor. The analogies are altogether different. The language of the constitution of North Carolina, and the language of the British constitution if we could get at it (which I imagine to be a very difficult matter) are wholly different from the language of the constitution under which we are trying this case.

Let us go for a moment to the latest impeachment trial that has occurred in this country, and certainly the most important and the most extraordinary, and the one that was the most thoroughly discussed of any that has occurred in the United States. One great point of discussion was, whether the senate was a court, to be governed by the rules of a court, or whether it was a senate, sitting merely for the time being as a court. Sir, it was conceded—and is not that the highest authority—by the managers on that important trial, that if the senate were a court, it was governed by the rules of a court. Is not that so, sir? Was it not so conceded that if a court, it must be governed by the rules and analogies of courts?

Sir, the counsel who last addressed the court states that the word "court" does not change the case. Why, sir, does it not change the case? If there was any meaning in the word it must change it. If the word "court" does not make such a change, what effect has this clause in the constitution of North Carolina which says that "the judicial power of the state shall be vested "in a court for the trial of impeachment, a supreme court, supe-"rior courts, courts of the justices of the peace and special "courts?" I say, then, that the moment the senate is organized and sits as a court of impeachment, it becomes a part of the judicial power of North Carolina, is sworn as a court, is designated as a court, and sits as a court by the organic law of the state, and for the time exercises judicial functions. I say, there-

fore, it is clear that this clause of the constitution sweeps away the precedents which are quoted here to sustain this prosecution, and it may be said that it was put in there expressly to settle these matters, in order that when the court was first organized there could be no more tampering with justice, and that the scales might be held evenly between the state and the respondent.

But, sir, what is the position of the other side? You organize as a court of impeachment under the constitution of North Carolina; you are sworn as a court of impeachment and then, under the constitution of North Carolina, you become a part of the judicial power of the state. Then it is contended that after being thus organized and sworn as a court, you may open it when you please to other members which formed no part of the court at the beginning of its deliberations. Sir, if it is a court of impeachment—a thing so declared by the organic law of the state—why should not the same analogies apply to it as the other courts? What right has any one to make a distinction and say that although the constitution declares you to be a court you shall be a court, but a court which shall not be governed by the rules of other courts in this state?

Let us suppose, as I stated before, the case of a superior court judge who had organized his court and had heard the evidence or a portion of it; could he leave his place and another judge be allowed to go upon the bench and decide upon the case, when there was no law permitting it? Would it not be monstrous and shock our sensibilities? Would it not be contrary to all analogies? Was there ever such a thing heard of in the judicial history of North Carolina? I say then, sir, it is clear that while, under the British constitution, the precedents are against us, our present constitution has changed the rule and made this body a court; and the moment it becomes a court and a part of the judicial power of the state it must be governed by the analogies of the courts of the state.

This, sir, is the whole point of my argument, and I could not add to it if I were to continue my remarks for an indefinite

period. I trust that I have presented the argument so clearly as to be understood by the members of the court.

The CLERK again read the challenge presented by the counsel for the respondent.

The CHIEF JUSTICE. The presiding officer is of the opinion that the challenge is not well taken, and that the senator (Mr. Edwards) is entitled to be sworn as a member of the court. Unless a division is called for, the opinion of the presiding officer will be taken as the rule of the court. There being no division, the senator will please come forward.

Mr. EDWARDS, senator from the twenty-first district, came forward and was duly qualified by the chief justice.

The CLERK proceeded to read the journal of the proceedings of the last meeting of the court and there being no objection thereto they were declared approved.

Mr. BADGER, of counsel for the respondent, submitted the following answer to article VIII, as previously amended:

"Answer to article VIII, as amended.

"For answer to said eighth article as amended, this respon-
"dent says, that he abides by his answer to the eighth article
'originally filed in this cause in so far as the same is respon-
'sive to the allegations contained in said eighth article as amen-
"ded, and without here again repeating the same answer, prays
"the same to be taken as an answer to the said eighth article as
"amended, and as to the new allegations contained in said
"eighth article as amended, this respondent denies the same.

"And further answering, this respondent denies, that by
"reason of any new allegations contained in said eighth article
"as amended, this respondent was guilty of a high misdemean-
"or as therein charged.

"W. W. HOLDEN.

"R. C. BADGER,
"J. M. McCORKLE,
"NATHANIEL BOYDEN,
"EDWARD CONIGLAND,
"W. N. H. SMITH,
"*Of Counsel.*"

Senator LEHMAN moved that the amended answer as read be accepted and filed.

The CHIEF JUSTICE put the question on the motion of Senator Lehman, and it was decided in the affirmative.

Mr. DUNHAM. Mr. Chief Justice, the respondent having filed his answer to the eighth article of impeachment as amended, in behalf of the board of managers, I ask that the court take a recess of fifteen minutes that we may submit the answer to the house of representatives and obtain its replication thereto.

The CHIEF JUSTICE put the question on granting the request of Mr. Dunham, and it was decided in the affirmative.

The time for the recess having expired, proceedings were resumed, the Chief Justice in the chair.

Mr. DUNHAM. Mr. Chief Justice, the house of representatives have prepared a replication to the amended answer, which I ask that the clerk may read.

The CLERK proceeded to read the replication in the words following:

In the articles of impeachment by the house of representatives against William W. Holden, governor of North Carolina, it being shown to the house by the report of the board of managers that the amendment of the eighth article requested by the house has been allowed by the senate sitting as a court of impeachment, and the answer of the respondent to the said article as amended being exhibited to the house, it is ordered:

That this house is content with the replication heretofore made to all such articles of impeachment and re-adopts the same, in reply to the answer as now exhibited.

Adopted by house of representatives, February 1st, 1871.

THOMAS J. JARVIS,
Speaker of House of Representatives.

Mr. GRAHAM, of Orange, moved that the additional replication be received and filed.

The CHIEF JUSTICE put the question on the motion of Mr. Graham, and it was decided in the affirmative.

Senator GRAHAM, of Orange, submitted the following order:

The eighth article of impeachment of William W. Holden, governor of North Carolina, having been amended by the house of representatives at the last session of the senate, sitting as a court of impeachment, to which said article as amended, the respondent has filed an amended answer, and to which the house of representatives has taken replication.

It is ordered, That the senate sitting as a court of impeachment, will now proceed with the trial of the respondent on said articles, in the senate chamber in the capitol of the state.

Ordered, That the presiding officer of the senate, setting as such court, do now administer to each member here present and to other members as they may appear, the oath or affirmation required by law.

The CHIEF JUSTICE. In looking at the act relating to proceedings on impeachment, the presiding officer discovers that a trial on an impeachment has two stages. One is the consideration of the articles of impeachment and the other is the trial after issue is joined. The act provides for an oath, to be administered at the time and place appointed for the trial after issue joined, then the rules of proceeding adopted by this body required that before proceeding to the consideration of the articles of impeachment, the presiding officer shall administer the oath to the members. That has been done in accordance with the rules. The presiding officer is of the opinion that the time has arrived, issue being joined and the time and place of the trial being fixed, to administer the oath to members again. The clerk will proceed to call the roll of senators.

Mr. ROBBINS, of Rowan. Mr. Chief Justice, I suppose it will be necessary to vote on the order fixing the time and place of trial.

The CHIEF JUSTICE put the question on the adoption of the order submitted by Senator Graham, of Orange, and it was decided in the affirmative.

The CLERK proceeded to call the list of senators in their

order when the following senators came forward and were duly qualified by the chief justice:

Messrs. Adams, Albright, Allen, Barnett, Battle, Bellamy, Brogden, Brown, Cook, Council, Cowles, Crowell, Currie, Dargan, Edwards, Eppes, Flemming, Gilmer, Graham of Alamance, Graham of Orange, Hawkins, Hyman, King, Latham, Ledbetter, Lehman, Linney, Love, Manney, McClammy, McCotter, Merrimon, Moore, Morehead, Murphy, Olds, Price, Robbins of Davidson, Robbins of Rowan, Norment, Skinner, Speed, Troy, Waddell, Warren, Whiteside, Worth.

Senator ROBBINS, of Rowan, submitted the following order:

Ordered, That the chief stenographer employed by the senate to record the proceedings in the impeachment trial, take the following oath, to-wit: "I solemnly swear that I will perform my duties as stenographic reporter faithfully and impartially, and will, to the best of my ability, make an accurate and truthful record of the proceedings in this trial, and of the evidence of the several witnesses introduced by the respective parties."

Mr. EDWARD F. UNDERHILL, the chief stenographer, came forward and was duly qualified by taking the oath prescribed.

Mr. GRAHAM, of Orange, moved that the court adjourn.

A sufficient number seconding the motion (as required by the rules, the hour for adjournment not having arrived.)

The CHIEF JUSTICE put the question on the motion of senator Graham, and it was decided in the affirmative.

So the court adjourned.

SIXTH DAY.

SENATE CHAMBER, Feb. 2, 1871.

The COURT met at 12 o'clock, M., pursuant to adjournment, Honorable R. M. Pearson, Chief Justice of the Supreme Court, in the chair.

The proceedings were opened by proclamation made in due form by the doorkeeper.

The CLERK proceeded to call the roll of senators, when a quorum was found to be present.

Senators BEASLEY and FLYTHE came forward and were duly qualified by the chief justice as members of the court.

Senator LEHMAN moved that the reading of the journal of the proceedings of yesterday be dispensed with.

The CHIEF JUSTICE put the question on the motion of Senator Lehman, and it was decided in the affirmative.

Mr. SPARROW, chairman of the board of managers, opened the case on the part of the managers. He said:

MR. CHIEF JUSTICE AND SENATORS:

The partiality of the board of managers has devolved upon me the responsibility of making to the senate, convened as a court of impeachment, a statement of the facts and of the law as applicable to the facts on which they rely, in support of the articles of impeachment preferred by the house of representatives against the governor of the state, and upon which they expect to urge before this honorable body his conviction. In the discharge of this important duty I can scarcely hope, with the limited times and means which I have had at my command, to do that justice to the subject, which the gravity of the occasion would seem to demand.

The spectacle exhibited in this senate chamber to-day, is without precedent in the annals of our country. It is the arraignment of the chief executive officer of a state, by the

people of a state, through the representatives of the people, at the bar of the senate, for crimes and misdemeanors in office. It is an accusation preferred by the people of North Carolina against the governor of North Carolina, for an alleged invasion of their rights as secured to them by the constitution and laws of the land, and the subversion of their liberties. It is a charge preferred by the people that he who was exalted by their suffrage to the highest office within their gift, to be a terror to evil doeos, has himself become a doer of evil—that he who was sworn to support and maintain the law, has become himself a violator of the law—that he whose sworn duty it was to protect the innocent and punish the guilty, has made instruments of the wicked and disorderly to punish the innocent and unoffending, verifying in his person the scripture maxim, "when the wicked are in authority the people mourn."

Those who may imagine that this impeachment of the governor is an attempt of a successful political party, in the flush of their triumph, to depose from his high office one who has made himself politically obnoxious to them, greatly underestimate the case and impute unworthy motives where none exist. As a party measure it would be fruitless of results as the removal from office of the present incumbent, would place in the executive chair as his successor one of his own party, the Lieutenant Governor, who is far less obnoxious to the people. It is a movement, Mr. Chief Justice and senators, which rises far above all party considerations. It is the uprising of an outraged and oppressed people, to vindicate the violated law. Of far less moment is the suggestion sometimes seen and heard, that this prosecution ought not to be carried on in the present depleted condition of the public treasury, and amid the financial prostration which abounds in all our borders. That it will cost money and further burden the people! The question of dollars and cents, poor as are the people of North Carolina—oppressed as they have been—plundered as they have been—groaning as they are under a burden of taxation—is a suggestion underestimating, as it is unworthy of their honor, their intelligence, their

virtue and their patriotism. The price to be paid for liberty, is always costly, sometimes in blood, invariably in treasure. No true son of North Carolina will hesitate to pay this price. God grant that it may never again be in blood! God grant that in all time to come, brother may never in all this land be arrayed against brother in civil strife.

Mr. Chief Justice and Senators, the people of North Carolina have always been distinguished for their *obidience to law*, and their love of liberty. If they possess any peculiar traits of character, pre-eminent above all others, they are these. It has been so in all their history from the 20th of May, 1775, of Mecklenburg memory to the present time. The cause which they seek to vindicate before this tribunal, is not theirs only, but the cause of all people who seek to preserve the forms of constitutional government and civil liberty. It is the cause of all free people, and of all people struggling to be free, the world over; the cause of New York and Missouri, as well as of North Carolina. The question is a great question. The issues are momentous issues. Are the principles of liberty, built up and established and perpetuated in Great Britain—handed down to our fathers—adopted by them and cemented with their blood—are these great principles of the English bill of rights of 1689, incorporated by the framers of our organic law into that instrument—of the great charter and habeas corpus, to be preserved in this country? No less issues than these are involved in this proceeding. Do we live in the enjoyment of constitutional freedom? Have we preserved unimpaired the liberties bequeathed to us by our English and American ancestors, or have we adopted a higher law than these, the law of tyrants and of temporary majorities, which override and subvert at will the forms of constitutional freedom?

Mr. Chief Justice, when those in whose persons the rights of freemen and the law of liberty have been violated by their unlawful arrest, and imprisonment, shall have appealed to the judiciary for relief *in vain;* when the people through their representatives shall have called upon the senate, sitting as a

court of impeachment for redress, *in vain*, then indeed will our liberties have departed, then will a revolution in our form of government have taken place, fearful in its proportions and realized by none of us. Then will the glorious temple of liberty reared for us by our fathers, instead of being, as we had too fondly supposed, real, substantial, built of strong rock and founded on a rock, have become as the house of the foolish man built upon the sand—swept away like similar fabrics of old, by the strong hand of power, and the "necessity" pleas of tyrants.

We are relieved of a subject which was fruitful of discussion in the impeachment trial of President Johnson, as to the character of impeachable offences. The constitution of the United States simply refers to the subject of impeachment without defining it. The long list of authorities cited in the very able discussions in the trial referred to, very conclusively establish the following as the law of the subject:

That every act which by parliamentary usage is impeachable, is defined a "high crime and misdemeanor."

That when the words "high crimes and misdemeanors" are used in prosecutions by impeachment, the words high crimes have no definite signification, but are used merely to give greater solemnity to the charge.

That there may be cases appropriate for the exercise of the power of impeachment, where no crime or misdemeanor has been committed.

That with the established parliamentary law of Great Britian, as their land marks to guide them, our fathers adopted a constitution under which official malfeasance and nonfeasance, and in some cases misfeasance, may be the subject of impeachment, although not made criminal by act of congress, or so recognized by the common law of England, or of any state of the union. They adopted impeachment as a means of removing men from office whose *misconduct* imperils the public safety, and renders them unfit to occupy official position.

Woodeson, whose lectures were read at Oxford in 1777, declared that impeachments extend to cases of which the ordinary courts had no jurisdiction. He says: "Magistrates and "officers may abuse their delegated powers to the extensive "detriment of the community, and at the same time in a man-"ner not *properly cognizable before the ordinary tribunals.*" And he proceeds to say "the remedy is by impeachment." [See impeachment of Andrew Johnson, pages 125, 126 and 147.]

These extracts, Mr. Chief Justice and Senators, define the common law doctrine of impeachable crimes and misdemeanors as it exists in Great Britain and the United States.

The provisions of the constitution of North Carolina on the subject of impeachment are as follows:

"No person shall be put to answer any criminal charge, except as hereinafter allowed, but by indictment, presentment, or impeachment." [Art. I, sec. 8.]

"The court for the trial of impeachments shall be the senate. "A majority of the members shall be necessary to a quorum, "and the judgment shall not extend beyond removal from and "disqualification to hold office in this State; but the party "shall be liable to indictment and punishment according to law. "[Article IV, sec. 5.]

"The house of representatives solely, shall have the power "of impeaching. No person shall be convicted without the "concurrence of two-thirds of the senators present. When "the governor is impeached, the chief justice shall preside.' "[Art. IV, sec. 6.]

It thus appears that the constitution of North Carolina provides for impeachment, but does not prescribe for what offences public officers may be impeached. It prescribes the court, the number necessary to convict, the judgment of the court, and its effect upon the accused, the impeaching power, and the presiding officers of the court, and there leaves the subject.

Our act of assembly of 1868–'69, [p. 409,] entitled "Proceedings of Impeachment," comes to our relief with a definition, and one in precise accordance with the common law doctrine heretofore announced, as prevailing in England and the United States. The sixteenth section of the act provides that "every officer in this state shall be liable to impeachment for,

"1st. Corruption or other misconduct in his official capacity;

"2d. Habitual drunkenness;

"3d. Intoxication while engaged in the exercise of his office;

"4th. Drunkenness in any public place;

"5th. Mental or physical incompetence to discharge the duties of his office;

"6th. Any criminal matter, the conviction whereof would "tend to bring his office into public contempt."

An enumeration of offences which neither enlarges nor abridges the common law doctrine as already understood and practised, both in Great Britain and in this country, but which for our purposes makes the discussion of what impeachable offences are, both definite and certain. This definition, it will be observed, embraces crimes and misdemeanors which are indictable both at common law and under statutes, and also a large class of offences which are not indictable at all. This latter class all seem to be embraced in the first subdivision of section 16, to-wit: "Corruption or other *misconduct* in his "official capacity." The first embraces, "Any criminal matter "the conviction whereof would tend to bring his office into "public contempt."

Has the respondent in this case been guilty either of "mis-"conduct in his official capacity, in his office of governor, or of "any criminal matter, the conviction whereof would tend "to bring his office of governor of North Carolina into con-"tempt?" These are the questions submitted to the consideration of the senate.

And this brings us to a brief statement of the nature and character of the offences preferred in the articles of impeachment against the accused.

Article I, charges, substantially, that the accused corruptly and wickedly declared the county of Alamance to be in "insurrection," whereas there was no insurrection;" that he took military possession of the county by armed bands of lawless and desperate men, organized without lawful authority; and that he made unlawful arrests of peaceable citizens, whom he imprisoned, beat, hung by the neck, and otherwise maltreated.

Article II, charges that he did the same in the county of Caswell.

Article III, charges the unlawful arrest and imprisonment of Josiah Turner, Jr., in the county of Orange, by the procurement and order of the accused.

Article IV, charges the unlawful arrest and imprisonment of John Kerr and three other citizens, in the county of Caswell, by the procurement and order of the accused.

Article V, charges the unlawful arrest and imprisonment, in the county of Alamance, by order of the accused, of Adolphus G. Moore, and the refusal of George W. Kirk, acting under and by the authority of the accused, to surrender the said Moore, in obedience to the writ of *habeas corpus*, to the civil authorities.

Article VI, charges the arrest of John Kerr and eighteen other peaceable citizens of Caswell county, and their detention and imprisonment, under the orders of the accused, by a large band of armed men, unlawfully organized into an army and commanded by George W. Kirk and others as officers, and the refusal of said Kirk by the order and command of the accused, to surrender the said citizens unlawfully held by him as prisoners, to the civil authorities in obedience to the writ of *habeas corpus*.

Article VII charges,

1. The unlawful organization of an army of desperate men commanded by Kirk, Burgen and Yates, all desperadoes from the State of Tennessee.

2. The hanging by the neck in Alamance county of William

Patton, and Lucien H. Murray, and thrusting into a loathsome dungeon Josiah Turner Jr., and F. A. Wiley.

3. Unlawful warrants made by the accused upon the Treasurer of the state, for large sums of money, for the unlawful purpose of supporting and maintaining the lawless bands of armed men organized as aforesaid.

Article VIII, charges, that the accused as governor, made his warrants for large sums of money on the public treasurer for the unlawful purpose of paying the armed men before mentioned—caused and procured said treasurer to deliver to one A. D. Jenkins, appointed by the accused to be paymaster, the sum of forty thousand dollars; that the Hon. Anderson Mitchell, one of the superior court judges, on application to him made, issued writs of injunction which were served upon the said treasurer and paymaster, restraining them from paying said money to the said troops; that thereupon the accused incited and procured the said A. D. Jenkins, paymaster, to disobey the injunction of the court and to deliver the money to another agent of the accused, to-wit: one John B. Neathery; and thereupon the accused ordered and caused the said John B. Neathery to disburse and pay out the money so delivered to him, for the illegal purpose of paying the expenses of, and keeping on foot the illegal military force aforesaid.

This enumeration of crimes and misdemeanors, Mr. Chief Justice and Senators, which are more particularly described in the articles of impeachment, and which we propose to make good by proofs, embraces all the offences of which a person is liable to be impeached, as set forth in the *first* and *sixth* subdivisions of the 16th section of the impeachment act of 1869 already referred to. It embraces acts which amount not only to "misconduct in office," but "corruption in office." It embraces also acts which are criminal in law, and will subject the offender to indictment before the courts; and who will say that a conviction thereof will not only tend to bring, but will not actually bring his office into public contempt.

And in the commission of these offences, the accused has not only made himself amenable to the law as enacted by the general assembly, he has also violated the fundamental law of the land which he is sworn to support and maintain.

We allege that he has thus violated the following sections of article I of the constitution of North Carolina, known as the declaration of rights.

"SECTION 17. No person ought to be taken, imprisoned, or "disseized of his freehold, liberties, or privileges, or outlawed or "exiled, or in manner deprived of his life, liberty or property "but by the law of the land.

"SEC. 21. The privilege of the writ of *habeas corpus* shall "not be suspended.

"SEC. 24. A well regulated militia being necessary to the "security of a free state, the right of the people to keep and "bear arms shall not be infringed; and as standing armies in "time of peace are dangerous to liberty, they ought not to be "kept up, *and the military should be kept under strict subordination to and governed by the civil power.*"

Mr. Chief Justice and Senators: The first and second of the articles of impeachment, declare, "that by the constitution "of the state of North Carolina, the governor of said state has "power to call out the militia thereof to execute the laws, sup-"press riots or insurrection, and repel invasion, whenever the "execution of the law shall be resisted, or there shall exist any "riot, insurrection or invasion, but not otherwise;" and they allege, that the respondent, with intent to incite war, subvert liberty and law, and to degrade the state and people, proclamed the counties of Alamance and Caswell to be in insurrection, occupied them by military force, and suspended civil authority, *when he well knew that such proclamation was groundless and false, and that there was no insurrection in said counties.*

This raises, as it seems to the board of managers, a very important question for the consideration of this honorable body, to wit: the precise meaning and import of the word *insurrec-*

tion as used in the constitution of the state of North Carolina.

The language of the constitution in article XII section 3, is as follows:

"The governor shall be commander-in-chief, and have power "to call out the militia to execute the law, suppress riots and "insurrection, and to repel invasion."

What does the constitution mean by "suppressing insurrection?" What is "insurrection?" When is a county or state in insurrection?

Webster, in his unabridged dictionary, defines it as follows:

"A *rising* against civil or political authority; the open and "active opposition of a number of persons to the execution of "law in a city or state. It is equivalent to sedition, except "that sedition expresses a less extensive rising. It differs "from rebellion, for the latter expresses a revolt, or an attempt "to overthrow the government, &c.

"*Insurrection* is however used with such latitude as to com-"prehend either *sedition* or *rebellion*."

Vattel in his Law of Nations, page 422, uses the following language: "Sec. 288. The name of rebels is given to all sub-"jects who unjustly take up arms against the ruler of the "society to deprive him of the supreme authority, resist his "commands and impose conditions on him."

"Sec. 289. If the rage of the malcontents be particularly "levelled at the magistrates or other officers vested with the "public authority, and they proceed to a formal disobedience "or acts of open violence, this is called sedition. When it "spreads, when it infests the majority of the inhabitants of a "city or province, and gains such strength that even the "sovereign himself is no longer obeyed, it is usual, &c., 'to "'distinguish such disorder by the name of insurrection.'"

These definitions, which might be multiplied, will answer our purpose. Let us analyze them. According to Webster, its very derivation from the Latin words *in* and *surgo*, to rise against, defines its meaning. There must be a rising; open,

and active, and violent, of a number of persons; in opposition to the execution of the law.

Now analyze Vattel's definition. It is this, "If malcon-"tents take up arms, and they proceed to formal disobedience "or acts of open violence against magistrates or others vested "with the public authority—when this spreads so as to infect "a majority of inhabitants, &c., it is insurrection."

This definition fulfills all the conditions of that laid down by Webster. There must be a rising, of a number, open, active, to oppose the execution of the laws.

Now follow up these definitions by a few well known examples taken from history.

And first, let us turn to Great Britain, to the time of Henry VIII, and to the effect produced upon the people by the illegal exactions of Wolsey, in 1523 and 1525, under the "Forced Loan." Hallam, in his Constitutional History, vol. 1, page 28, says of the people: "Nor did their discontent terminate in "complaints. The commissioners (to collect the tax) met with "forcible opposition in several counties, and a serious insur-"rection broke out in Suffolk. In this connection he speaks "also of the assemblages as tumultuous."

Turn to the well known insurrection in Massachusetts in 1786, to be found in all the histories of the United States, commonly called Shay's Rebellion. Here, according to Judge Marshall's life of Washington, (p. 117,) twelve or fifteen thousand men were, at different times, arrayed in open hostility against the payment of dues to the officers of the United States government; against the payment of taxes to the government; against lawyers and courts of justice. He says "tumultuous "assemblages of the people arrested the course of law, and "restrained the judges from the execution of their duty."

Turn to the case of insurrection in the western counties of Pennsylvania, in August, 1794, familiarly known as the "Whiskey Insurrection" Marshall, in his life of Washington, (pages 340–'41, et. seq.,) says of it, that there was "sedi-"tious and violent resistance to the execution of the law im-

"posing duties on distilled spirits in the United States;" that there was "open defiance of the laws, insurgents fired on the "Marshal, and attacked the house of General Nevil, the In-"spector." Finley and Hallam, and the report of the case in the state trials, more than confirm all that is here said.

These authorities, Mr. Chief Justice and Senators, all speak one language; and they might be multiplied to an almost indefinite extent. To constitute insurrection there must be a rising of the people, and open, active resistance by them, to the enforcement of the laws in a town, county or district. And you may consult the authorities, both of law and letters, and the examples of history, foreign and domestic, ancient and modern, and you will consult them in vain for another definition. Are we not justified, therefore, in the assertion that the word insurrection, as used in the laws of England, the constitution of the United States, and the constitution of North Carolina, indeed the constitutions of all the states, has a common law meaning, which is not uncertain, but fixed and definite?

It will doubtless be argued here, as it was argued before the chief justice at chambers in the *habeas corpus* cases, that the meaning of the word "insurrection" as used in the constitution, is modified, altered or abridged, by the act of assembly of 1869–'70, "to secure the better protection of life and pro-"perty." The first section of that act authorizes and empowers "the governor "whenever in his judgment the civil authorities "in any county are unable to protect its citizens in the enjoy-"ment of life and property, to declare such county to be in a "state of insurrection." &c.

Supposing that the legislature by this act, intended to modify the common law meaning of *insurrection*, and to give a partial definition of it, which intention we do not mean to concede; then two questions present themselves. First, had the legislature the right to declare that to be insurrection which is not insurrection? In the exercise of the discretionary power vested in the governor by the act of assembly, had he the authority to

declare a county to be in a state of insurrection when there was no insurrection? For the abuse of such authority, even if it were properly bestowed, would he not be amenable to the court of impeachment? These questions carry with them their own answers. It is not within the province of the legislature to construe and declare the meaning of acts of assembly, which had become law, except in certain exceptional cases. [See Houston vs. Bogle 4, Iredel, 496, and cases cited.] This is the peculiar province of the courts. Much less is it within the power of the legislature by any act of theirs to declare the meaning of an article in the constitution; and if it cannot define, how can it alter, modify or abridge its meaning? If such was its purpose, which is not believed, in passing the act of 1869–'70, its action was unconstitutional, and the act itself is a nullity. The legislature cannot give to the constitution a meaning not intended by the framers of that instrument—put upon an article thereof a construction which it will not bear—pronounce that to be insurrection which is not insurrection, and so encourge a violation of the law of the land, and the liberty of the citizen. We shall insist, therefore, that in this investigation, it will not be competent to give in evidence, any state of facts which do not go to make up insurrection as already defined.

We are prepared to show, on the contrary, that there was nothing in the condition of the counties of Alamance and Caswell which goes to fulfill the conditions of an insurrection. There were no uprisings of the people to resist the enforcement of the laws or the officers of the law. The people of those counties were in complete subordination to lawful authority. The business of the country was not interrupted. The farmer was in his fields—the mechanic in his workshop—the merchant behind his counter—the minister of the gospel in the pulpit. The officers of the law were in the undisturbed exercise of all the functions of their offices. The justices' courts were open—the courts of the probate judges were open—the

offices for the registration of deeds and conveyances were open—the sheriffs and constables executed the process of the courts undisturbed;—regular terms of the superior courts were held, and at no time and no place, so far as is known, was there resistance by any body of men to the officers of the law.

Is it a sufficient answer to all this to say, that in Caswell county a state senator was secretly murdered in the day time, and that in Alamance county one man was secretly hung, and another secretly drowned, and others secretly whipped? How do these cases vary from similar ones occurring in all parts of the country every year, and every month in the year? Why should the secret murder of Stephens in Caswell, or of Outlaw in Alamance, constitute insurrection in those counties, more than that the secret murder of Nathan in the city of New York should put that city in a state of insurrection? And why should the military be called on to ferret out secret crimes? Have the men who usually belong to military organizations any peculiar aptitude or fitness for such duty more than the sworn officers of the law? The men sent to these counties were peculiarly qualified for the perpetration of outrages upon the persons of unoffending citizens, and of suspected persons, and by threats, intimidations, hanging by the neck, and other like means to extort confessions from unwilling or innocent witnesses.

The civil authorities are more competent and better qualified to detect and bring to justice secret violators of the law than the military. Especially must this be true if the military must do as the law requires, turn over offenders when arrested to the civil authorities for trial. Even if military aid had been wanting, there were, we expect to show by the evidence, companies of the United States troops stationed in both these counties, sent there by the governor of the state, before and after the organization of these forces.

Mr. Chief Justice and Senators, it is charged in the fifth, sixth and seven articles of impeachment, that the military force organized, armed and equipped by respondent, and sent under

the command of one George W. Kirk, into the counties of Alamance and Caswell, were unlawful troops; an armed force not recognized by the constitution of the United States, nor by the constitution and laws of North Carolina.

The constitution of the United States, article 1, section 8, clause 14, empowers congress "to provide for calling forth the "militia to execute the laws of the union, suppress insurrec-"tions, and repel invasions."

The constitution of North Carolina, article 3, section 8, is as follows: "The governor shall be commander-in-chief of the "militia of the state, except when they shall be called into the "service of the United States."

Article 12, *section* 1, reads:

"All able-bodied male *citizens* of the state of North Caro-"lina, between the ages of *twenty-one* and forty years, who "are citizens of the United States, shall be liable to do duty in "the militia."

Section 2 reads:

"The general Assembly shall provide for the organizing, "arming, equipping and discipline of the *militia*, and for pay-"ing the same when called into active service."

Section 3 reads:

"The governor shall be commander-in-chief, and have power "to call out the *militia* to execute the law, suppress riots and "insurrection, and repel invasion."

The general assembly of North Carolina in August, 1868, passed "An act to organize a militia of North Carolina."

Section 11 of that act provides:

"No man shall be an officer or private in the detailed militia "unless he be an elector of the state, and first take and sub-"scribe the constitutional oath of office."

The act of 1869–'70, known as the Shoffner act, section 1, authorizes the governor whenever, &c., "to call into active "service the militia of the State to such an extent as may be-"come necessary to suppress insurrections."

These various recitals from the constitution and laws sufficiently explain that no body of armed men can be lawfully organized in North Carolina otherwise than as *militia* and under the militia laws. And who are to constitute the militia? The constitution prescribes that they must be citizens of the state. And section 11 of the same act provides that "no man "shall be an officer or private in the detailed militia unless he "be an elector of the state."

Was this the character of the force organized by Governor Holden, and sent into the counties of Alamance and Caswell? We are prepared to prove that these men were not organized as militia under the militia laws, but were raised as an independent volunteer force, recruited mainly from one locality in this state and an adjoining locality in the state of Tennessee, and that the colonel, lieutenant colonel, and major of one of the regiments were all men of desperate character from the state of Tennessee. And very many of the men recruited were under and over the age prescribed for the militia in the constitution. Neither in the constitution of the state, nor in the acts of 1868, nor in the Shoffner act of 1869–'70, is there any provision for the character of troops raised by the respondent and commanded by George W. Kirk, called state troops. Such a military force was not only not authorized by the constitution of the state, but was organized in express violation of the 1st article of the constitution of the United States, which declares that "no state shall without the consent of congress, "keep troops or ships of war in times of peace."

The third and fourth articles of impeachment charge the unlawful arrest, detention and imprisonment, by order of the respondent, as governor, of Josiah Turner, Jr., in the county of Orange, and of John Kerr and three others in the county of Caswell, without any lawful warrant or authority.

Was the arrest of these men unlawful? Was it made by the order of the respondent; or having been made without his order, were they detained and imprisoned with his knowledge, approval and consent, by his agents?

Section 17 of the declaration of rights of North Carolina, declares that, "No person ought to be taken, imprisoned or "disseized of his freehold, liberties or privileges, or outlawed, "or exiled, or in any manner deprived of his life, liberty, or "property, but by the law of the land."

In the face of this plain provision of the constitution, by what authority is it claimed that these arrests were made? Is it under the provisions of the act of 1869–'70, "to secure the "the better protection of life and property?" The provisions of that act do not authorize such arrests, and if they were intended to confer that authority, such provisions would be unconstitutional. Is it claimed that the county of Caswell, having been declared in insurrection, civil law was suspended and martial law was in force? The answer is, martial law cannot prevail in North Carolina. The writ of *habeas corpus* cannot be suspended. It is a civil writ issued by the judiciary and served by a civil officer. Martial law suspends all civil authority and therefore the writ cannot run.

In the insurrection in western Pennsylvania, in 1794, against the laws of the United States, where the resistance was violent and treasonable, martial law was not declared, nor the writ of *habeas corpus* suspended. The troops were called out expressly to co-operate with the civil authorities, and to cause the laws to be duly executed. Arrests were then made by the civil officers, and those seized carried before the civil authorities for hearing and trial. [See cases cited by Woodbury J., in Luther *vs.* Borden, 7 Howard.]

In Burr's conspiracy in 1805–'6 arrests were made on oath and warrant, except in two cases, and these were immediately discharged under writs of *habeas corpus.*

The use of the army of the United States, and of the militia of the states, in time of insurrection, riots and rebellion, is to *assist* the civil authorities in the enforcement of the laws, not to supercede and set them aside.

This doctrine has been very wisely incorporated into the

militia act of 1868, in force when these arrests were made. Section 22 of that act provides that "The detailed militia or-"ganized under the provisions of this act, shall not be used on "any occasion, nor under any pretext for any other purpose "than to execute the laws, and to repress resistance to the "same, and it may be called upon by any peace officer for that "purpose."

No principle of law, Mr. Chief Justice and Senators, is better settled in this land of liberty than the exemption of citizens from arrest, except by due warrant of law.

In the case of Josiah Turner, Jr., he was arrested in the county of Orange, which had not been proclaimed to be in insurrection, and therefore the respondent is deprived of even this shallow pretext for justification. And his plea that he did not order his arrest in that county, but only in the counties of Alamance and Caswell, cannot avail him, as he confesses that when informed of the arrest he authorized the detention of the prisoner, thereby giving his sanction to his arrest, as though it had been made by his order in the first instance. Even the *rights of war* are not to extend beyond the place where the insurrection exists; nor to persons not connected with it; nor even within the scene, to persons or property of citizens against whom no probable cause exists. [See Luther *vs.* Borden, 7 Howard, p. 84.]

As conclusive of this whole matter, the chief justice in *ex parte* Moore, decided that as a means to suppress insurrection, "the detention of the petitioner as a military prisoner, is not "a proper means. For it violates the bill of rights." [See Habeas Corpus cases, p. 33.]

Articles *five* and *six* charge the arrest and imprisonment of Adolphus G. Moore, of Alamance, and John Kerr and seventeen others, citizens of Caswell county, and the refusal of George W. Kirk, acting under the orders of the respondent, to surrender them to the judiciary for examination, in obedience to the writ of *habeas corpus*. The respondent acknowledges that said prisoners were detained by his orders and

that the refusal to deliver them in obedience to the exigencies of the writ was by his authority.

Section 21 of the declaration of rights, declares that "The "privilege of the writ of *habeas corpus* shall not be suspended."

Adolphus G. Moore, a citizen of Alamance, filed his petition before Chief Justice Pearson at chambers, on the 16th of July, 1870, in which he alleged that on the 15th day of July, 1870, while he was about his lawful busines in said county, he was arrested and detained by a squad of persons purporting to be soldiers, acting under the orders of one George W. Kirk. That bail was offered by him and denied by said Kirk—that his arrest was without warrant and for no cause, and he therefore prayed the chief justice to grant to him the writ of *habeas corpus*, to be directed to the said Kirk, commanding him to produce forthwith the petitioner before his honor together with the cause of his arrest. The writ was granted as prayed for on the same day. On the 17th day of July it was duly served upon the said Kirk, who upon being informed of its contents declared "That he could take no notice of such papers—that they had played out—that he was acting under orders from Governor Holden, with instructions to disregard such papers—that the court had been appointed to try them (the prisoners,) and that he would surrender them on Governor Holden's order, but not otherwise unless overpowered by force. This return having been made to the chief justice on the 18th day of July, he immediately informed the respondent that Kirk had refused to make return of the writ, and asked whether Kirk "acted under "his orders." On the day following the accused replied that "Col. Kirk made the arrests, and now detains the prisoners "named, by my order. He was instructed firmly but respect-"fully to decline to deliver the prisoners."

The chief justice in announcing his decision on a motion for the arrest of Kirk for contempt of court, said: "I declare "my opinion to be, that the privilege of the writ of *habeas* "*corpus* has not been suspended by the action of his excellency; "that the governor has power under the constitution and laws

"to declare a county to be in a state of insurrection, to take "military possession, to order the arrest of all suspected per- "sons, and to do all things necessary to suppress the insurrec- "tion, but he has no power to disobey the writ of *habeas* "*corpus*, or to order the trial of any citizen, otherwise than by "jury. According to the law of the land, such action would "be in excess of his power."

Writs of *habeas corpus* were also issued on the 26th day of July, upon the petition of John Kerr and eighteen other citizens of Caswell county, by the chief justice. These writs were placed in the hands of George Williamson, for service on the said Kirk. On the 20th of July said Williamson filed an affidavit which I propose to read:

"George Williamson makes oath that he is a citizen of the "county of Caswell, and a qualified elector of the state of North "Carolina: that writs of *habeas corpus* in behalf of all the "persons above named, issued by Richmond M. Pearson, chief "justice of the state, were placed in his hands, for service upon "George W. Kirk. That he went to Yanceyville with the said "writs, on the 27th of July, 1870; that the prisoners above "named, were, as he was informed, confined in the court house "in that place; that he found armed sentinels surrounding the "court house; that for the purpose of seeing the said George "W. Kirk, and serving the said writs, he attempted to enter "the court house square when he was stopped at the gate "thereof by a sentinel at the said gate; affiant told him he "wished to see Col. Kirk; an officer was then called, and came "out; he was said, in affiant's presence, to be the adjutant; he "asked affiant what was his business; affiant told him he had "a communication for Col. Kirk; he asked the nature of it; "affiant told him he preferred to see Col. Kirk; the said adju- "tant then entered the court house, and a person said to be "Major Yates, came out to affiant—asked affiant's name, and "that of another person with affiant, which was given him. "The said Yates then asked affiant what was the nature of the "communication he had for Col. Kirk. Affiant told him

"that they were writs of habeas corpus, issued by chief just
"Pearson taking the said writs from his pocket at the tim
"which he wished to serve upon the said Kirk. He told a
"fiant that he would have nothing to do with them—and th
"he affiant, could not see Col. Kirk. He, the said Yates, final
"said Col. Kirk was busy, but might see him in half an hou
"Affiant then retired to the piazza of a store, in view of the cou
"house. Some half hour or more afterwards, seeing the sa
"Yates at the gate of the court house square, affiant again we
"to him, and asked him what Col. Kirk said, and whether I
"could see him. He replied that Col. Kirk refused to hav
"any communication with affiant. Affiant then retired son
"fifty yards, and took his seat under a tree. He saw two pe
"sons standing at an upper window in the court house, one
"whom he was informed was Col. Kirk; and affiant then a
"tempted to approach the window, holding up the said wri
"in his hands; the person said to be Col. Kirk, immediatel
"retired; affiant had not gone within the line of sentinels, bu
"after his attempt to approach the said window, he saw th
"same person who he had been told was colonel Kirk, when a
"said window, in the vestible of the court house, on the lowe
"floor; he seemed to be giving orders or instructions to th
"soldiers outside; immediately a drum was beaten; affian
"then retired under the tree as aforesaid; some thirty or fort
"armed men, upon the beat of the drum, formed a line, an
"seemed to be loading their muskets. They approached afi
"ant, but before getting to him were halted, and in a fe
"moments returned to the court house, and just after a squa
"of seven men, armed with muskets, and under the comman
"of the said major Yates, came to affiant, and affiant wa
"ordered to leave, or he would be fired into; affiant then lef
"and made no further attempt to deliver the said writs to th
"said George W. Kirk.

"GEORGE WILLIAMSON.

"Sworn and subscribed before me this the 29th day of July
"A. D. 1870.

"W. H. BAGLEY, *Clerk.*"

Mr. Chief Justice and Senators, the unlawful conduct of the respondent, complained of by the people, cannot be put in a stronger light than by reference to the effect produced by the soldiers organized by his orders, and sent into the counties of Alamance and Caswell. These desperate men, not only arrested innocent and unoffending citizens, some of them men like John Kerr and Samuel P. Hill, whom the state had honored with high offices, and who had proved themselves not unworthy of the confidence bestowed, but they defied and thwarted the action of the judiciary of the state, (always heretofore the bulwark of civil liberty,) in affording relief to the prisoners. Is not the fact notorious that the chief justice, having issued the writs as prayed for in the case of Moore and others, having ordered the production of the prisoners before the court, and when this order was disobeyed, *the court* declined to adopt the usual and necessary orders to enforce obedience to its mandate? And for what reason? Let the court speak for itself:

"It is highly probable, nay, in my opinion, certain that the "writ in the hands of the sheriff (with authority to call out the "power of the county) by which he is commanded if necessary, "to take the petitioner out of the hands of the military authori-"ties, will plunge the whole state into civil war."

So the enforcement of the great writ of right, by the judiciary of the state, would have brought on a conflict with the military organized by the governor, and therefore they decline to enforce the writ. The governor by his military, not only established a terrorism over the people, but he silenced the voice of the judiciary.

The respondent claims that he was authorized to call out the militia to suppress insurrection and to make arrests, and that he is sustained in this by the judiciary.

And so he had power under the laws to execute the laws, suppress riots or insurrection, and repel invasion, had such a state of things existed; but no such state of things did exist,

and even if it had, he would be responsible for the abuse of that power before a court of impeachment.

In Martin vs. Mott, 12 Wheaton, p. 14, Story, Justice, says:

"When a statute gives a discretionary power to any person, "to be exercised by him upon his own opinion of certain facts "it is a sound rule of construction that the statute constitutes "him the sole and exclusive judge of the existence of these "facts. It is no answer that such power may be abused, for "there is no power which is not susceptible of abuse. The "remedy for this as well as for all other official misconduct, if "it should occur, is to be found in the constitution itself,"—meaning impeachment.

The respondent in his answer to article V. says: "It was his "purpose to detain the said Adolphus G. Moore and the other "persons so arrested in the said counties of Alamance and "Caswell, only until such time as he might with safety to the "state surrender them to the civil authorities." (p. 37.)

We propose to test the truthfulness and sincerity of this declaration by facts which we shall put in evidence. These facts will also tend to show the *animus* of the respondent in these proceedings, and deprive him of the plea of "good intent," if indeed such plea could avail him in this trial.

On the 10th of March, 1870, he wrote to the President of the United States, and what follows is an extract from his letter. He says:

"If congress would authorize the suspension, by the presi-"dent, of the writ of *habeas corpus*, in certain localities, and if "criminals could be arrested and tried before military tribunals, "and shot, we should soon have peace and order throughout "all this country. The remedy would be a sharp and bloody "one, but it is as indispensable as was the suppression of the "rebellion."

On the 14th of March, 1870, he wrote to the "Senators and "representatives in congress," and says: "I have been com-"pelled to declare the county of Alamance in a state of insur-"rection. I have called on the president for aid. But he is

"restricted by the writ of *habeas corpus*. We want military "tribunals by which assassins and murderers can be summarily "tried and shot; but we cannot have these tribunals unless the "president is authorized to suspend the *habeas corpus* in certain "localities. Please aid in conferring this power on the presi- "dent, as the only effectual mode of protecting life and pro- "perty in Alamance and other localities in this state."

And on the 17th of the same month he appeals to Mr. J. C. Abbott, U. S. senator, &c., in this wise:

"What is being done to protect the good citizens in Ala- "mance county? We have federal troops, but we want power "to act. Is it possible the government will abandon its loyal "people to be whipped and hanged? The *habeas corpus* "should be suspended at once."

So much as to the animus of the respondent. Now as to his purpose to release the prisoners.

The petition of Adolphus G Moore was filed July 16th, 1870; that of John Kerr and others, on the 26th of July, 1870.

We propose to show by the correspondence of the respondent, that he had, at this very time, provided for the calling of a military court to try the prisoners then held in custody, and that it was his purpose to convene the same the first week in August.

On the 7th day of August, 1870, he again writes to the president of the United States, and the concluding paragraph in his letter is as follows:

"It is my purpose to detain the prisoners, unless the army of the United States, under your orders, shall demand them."

When judge Brooks, of the United States district court, at a later day, to wit, on the 6th day of August, issued his precept in the name of the president of the United States, directed to Kirk, commanding him to produce the prisoners before him at the court house in Salisbury, immediately, then it was for the first time, that the respondent made the discovery that it had all along been his intention to surrender the prisoners, "as

"soon as the safety of the state should justify it," announced, for the first time, in his letter of August 15th, 1870, to the chief justice, which letter we propose to put in evidence. Then it was, that for the first time, he ordered George W. Kirk to obey the writs of *habeas corpus*, having protracted their imprisonment until the very last hour, meantime thrusting them into jail.

The seventh and eighth articles of impeachment charge that the respondent having organized an armed body of men, unknown to the laws of North Carolina, and sent them to the counties of Alamance and Caswell, and there having arrested, imprisoned and otherwise maltreated many of the peaceable and law abiding citizens of those counties; to sustain and keep on foot this unlawful force, he made in June, July and August last, his warrants upon the public treasurer of the state, without authority of and in violation of law, for large sums of money, exceeding in amount, from time to time, the sum of eighty thousand dollars, and caused the treasurer to pay the same to one A. D. Jenkins, whom the respondent had appointed to be paymaster to this unlawful military force. That thereafter one Richard M. Allison, a citizen of Iredell county, on behalf of himself and all the tax payers of the state, brought his suit in the superior court of Iredell county, praying that a writ of injunction might be granted restraining the said treasurer from delivering any sums of money to the governor, or to any other persons by his order, and also restraining the said A. D. Jenkins, as paymaster, from disbursing any funds in his hands for the payment of said unlawful troops. The Hon. Anderson Mitchell, judge of the superior court, granted the writ prayed for, enjoining and forbidding said treasurer and said paymaster, to deliver or disburse any part of the said money for the use of said body of men, and the process of the court was duly served upon these parties. That after this the respondent ordered and procured the said A. D. Jenkins, as paymaster, to disregard the writ of injunction and to pay over the money in his custody, to one J. B. Neathery, who had been appointed paymaster by

the respondent, in the place of the said Jenkins, and thereupon the respondent ordered and caused the said Neathery to pay out and disburse the money so transferred to him, for the illegal purpose of paying the expenses and keeping on foot the military force aforesaid.

If this force, Mr. Chief Justice and senators, as organized by the respondent, was an unlawful force, such as was not authorized to be organized, armed and equipped by the constitution and laws of the state, the respondent's warrants, as governor, made upon the treasurer for money to pay these troops were unlawful. And when a court of law had so decided, and had issued its process enjoining and forbidding the payment of the money, he was bound to respect the decision of the court, and had no right to cause its order to be violated or evaded. But this he did by a subterfuge—an artifice unbecoming the dignity of his high office, which cannot avail him before this court. He not only violated the law in organizing an armed body of men unknown to the law, but he caused the courts of law and the mandates of the courts, to be disregarded and set at open defiance by his agents. And for this behavior so unbecoming the governor of a free people, he will be held to a strict accountability before this tribunal.

I will here ask one of my associates on the board of managers to read a statement of facts which has been prepared and which we shall substantiate by the evidence.

Mr. Manager JOHNSTON read the statement of facts in the words following:

We expect to satisfy the senate by the most undoubted proofs, in addition to what has already been said as to the condition of the counties of Alamance and Caswell, where, from the organization of the existing state government to the month of July, 1870, the civil authorities, both county and state, were in the full exercise of their respective powers; and where no opposition had been offered to any effort to bring offenders to justice according to the ordinary course of law. The respondent on the 7th day of March, 1870, under circumstances manifest-

ing a wicked heart and purpose, falsely proclaimed the county of Alamance to be in insurrection; and on the 8th day of July of the same year, made a like false proclamation as to the county of Caswell; that these proclamations were made under circumstances calculated to provoke the people of those counties and manifested a purpose on the part of the accused to humiliate and degrade them. That in furtherance of this wicked design, the accused procured from the state of Tennessee, a man of notoriously desperate character, by the name of George W. Kirk, who was very offensive to the people of this state on account of his widely known character for lawlessness and violence, and on the 21st day of June last, commissioned him to recruit a regiment of men of like desperate character with himself, with the understanding at the time of his appointment, that his men should be mostly recruited from one locality in this state and an adjoining locality in the state of Tennessee, where numberless outrages and atrocities had been perpetrated during the late war, which had been participated in by the said Kirk and the men whom he was to recruit. That the accused, with a full knowledge of the lawless character of Kirk, drew from the treasury of the state, without lawful authority, the sum of one thousand dollars, and committed it to the custody of this man, as a recruiting fund, taking no bond or security for its safe keeping or proper disbursement. That at the same time the respondent appointed another man of like bad character and antecedents from the state of Tennessee, named B. G. Burgen, a companion of Kirk, to be his lieutenant-colonel; and afterwards another by the name of Yates, also from Tennessee, to be major under him. That these men thus armed with authority and furnished with money by the respondent, went into the mountains of East Tennessee and the counties of North Carolina adjacent thereto, where they recruited a force of several hundred men and organized them into a regiment of soldiers. Thus organized, by order of the respondent, they encamped at Company Shops, in the county of Alamance. That of the men so recruited, many were from the state of

Tennessee, many were under the lawful military age of twenty-one, and some of them old men, much beyond the military age of forty years, while the large majority of them were ignorant, roving, desperate characters, who were scarcely half civilized, and had served on both sides in the late civil war. That the respondent used the funds of the treasury in the arming and equipment of these men, and having organized them into a regiment, ordered and procured them to take forcible armed possession of the counties of Alamance and Caswell. Having done so, the said Kirk absolutely subverted the civil authority and proclaimed martial law in those counties. He took forcible possession of the court houses and public records, and many of the latter he and his men destroyed, using them as waste paper. That the said Kirk under the orders of the respondent, arrested great numbers of the citizens of these counties in the most brutal and insulting manner, and among those so arrested, were some of the purest and best men of the state, men against whom a breath of suspicion had never been, nor can be uttered. That most of the persons so seized, were held in close confinement for the space of a month or thereabouts, and many of them subjected to the grossest insults, while others were treated with cruelty and inhumanity. In Alamance several were hanged by the neck for the purpose of extorting confessions, others were thrust into a loathsome dungeon in the common jail of that county; while one at least, was confined in a cell with a negro man who had been condemned to suffer death for the crime of rape and was afterwards executed, and still another was chained to a floor in a dungeon. That the persons so confined, were denied wholesome food and water, and the humane were not allowed to administer to their necessities. These atrocities were perpetrated by the men who were armed by the respondent, and sent into those counties to take military possession thereof, and to make arrests. And in vain did the press, the people and individuals call such outrages to the attention of the respondent, and protest against them. These complaints were to

him "like the voice of the charmers, charm they never so wisely." They went unheeded. When notified that his troops were destroying the papers and records of the courts, deposited for safe keeping in the court houses of Alamance and Caswell, and importuned to allow the proper custodians to take possession thereof, he peremptorily refused, declaring that martial law prevailed. The citizens so imprisoned and so maltreated were under orders of the respondent, denied the privileges of the writ of *habeas corpus*, and the mandates of the chief justice of the state, ordering the production of the prisoners before him to inquire into the cause of their arrest and detention, were treated with contempt. We expect further to show, that failing to obtain relief from the judiciary of the state, who had declined to take the necessary steps to enforce the process of the court, lest it should result in war and the shedding of blood, the prisoners so detained at length applied for the writ of *habeas corpus* to the judge of the United States district court, and the writ was issued; even then the respondent sought to obtain authority from the president of the United States and from Congress to secure their further detention, and yielded at the very last moment, with extreme reluctance, and when it had become manifest that he could no longer hold them.

We shall further show that while the avowed object of the respondent was to suppress crime and punish offenders, he caused to be arrested great numbers of citizens against whom there was not only no charge preferred, but who were not even liable to a well-grounded suspicion, and who after having been subjected to insults and indignities at the hands of a brutal soldiery, were at length discharged without inquiry. That notwithstanding all these arrests under one pretext and another, as well as those who were examined before the chief justice and the United States district judge, as those who were not, we shall be able to show, that to this day there has been no attempt on the part of the respondent, to have them prosecuted before the courts of law, the fact being patent that there is not suffi-

cient evidence against those alleged to be the most guilty, to justify the finding of a bill by a grand jury. That after the arrest of these men in the counties of Alamance and Caswell, the respondent did not order, nor intimate any intention to order a court of oyer and terminer for their trial in those counties, as he might at any time have done, but on the contrary from the very inception of his military movement declared it to be his intention to order a military commission to try them.

There are many facts and circumstances tending to show the animus of the respondent in these proceedings, with which we do not now propose to trouble the court, but which will be developed in the course of the investigation.

Mr. SPARROW (resuming). Mr. Chief Justice and Senators, the people and their representatives, and this board of managers and their learned associate counsellors, do not desire the conviction and deposition from office of the respondent, if, on the full hearing of the case both on the facts and the law, as we shall present them, he be not guilty. If he cannot be fairly and legally convicted of the crimes charged against him, then let him be acquitted—let him be restored to his office and obeyed as the chief executive magistrate of this great commonwealth.

But if he be guilty it is expected, and the people of North Carolina demand of her senators, a fearless vindication of the majesty of her violated laws. If this be done, freedom and personal liberty may again become the proud boast of her citizen—our liberties be perpetuated, and our beloved North Carolina continue to be the pride and glory of her children, long years after these granite walls within which we sit shall have crumbled into dust.

Mr. MERRIMON. Mr. Chief Justice and Senators, the managers are ready to proceed with the trial and to introduce evidence in support of the statements made in the opening of the chairman of the board of managers.

The CHIEF JUSTICE. Are you ready to proceed with the examination of witnesses?

Mr. MERRIMON. We first propose to introduce the documentary evidence. We first offer in evidence a certified copy of the oath of office taken by the accused as governor.

Mr. Manager DUNHAM read the oath in the words following:

SUPREME COURT ROOM,
Wednesday, July 1, A. D. 1868.

I, William W. Holden, do swear upon the Holy Evangelist of Almighty God, that I will support the constitution and laws of the United States and of the state of North Carolina, and that I will faithfully perform the duties appertaining to the office of governor of the state: So help me God.

W. W. HOLDEN.

Sworn to and subscribed before me, R. M. Pearson, C. J.

STATE OF NORTH CAROLINA,
Executive office.

I, J. B. Neathery, private secretary to his excellency, the governor, do hereby certify that the foregoing is a true and perfect copy of the oath of office on file in this office.

Given under my hand the 30th day of January, A. D. 1871.

[Seal.] J. B. NEATHERY,
Private Secretary.

Mr. MERRIMON. We next offer in evidence a certified copy of the proclamation issued by the accused declaring the county of Alamance in insurrection.

Mr. Manager DUNHAM read the paper in words the following:

A proclamation by his excellency, the governor of North Carolina.

EXECUTIVE DEPARTMENT,
Raleigh, March 7th, 1870.

By virtue of authority vested in me by the constitution of the state, and by virtue of an act passed at the present session of the general assembly, entitled "An act to secure the better "protection of life and property," ratified the 29th day of January, 1870, and for the reason that the civil authorities of the county of Alamance are not able to protect the citizens of said county in the enjoyment of life and property, I hereby proclaim and declare that the county of Alamance is in a state of insurrection.

On the 26th of November, 1869, a citizen of the United States, who was engaged in teaching a school in said county, was taken from his home by a band of men armed and disguised and was by them cruelly beaten and scourged.

On the night of the 26th of February, 1870, a citizen of said county was taken from his house by a band of men armed and disguised, and was by them hanged by the neck until he was dead, on the public square in the town of Graham, near the court house.

And more recently the postmaster at Company Shops, in said county, an officer of the government of the United States, was compelled to flee the county, and while absent, a band of men armed and disguised visited his house with the purpose, doubtless, of taking his life, and this within a short distance of federal troops stationed in said county, not to overawe or intimidate good citizens, but to preserve the peace and to protect the innocent and the law abiding.

In addition to these cases, information has been received at this department that peaceable and law abiding citizens of the county aforesaid, have been molested in their houses, have been whipped, shot, scourged, and threatened with other visitations of violence and outrage unless they would conform to some arbitrary standard of conduct set up by these disguised assassins and murderers.

I have issued proclamation after proclamation to the people of the state, warning offenders and wicked or misguided violators of the law, to cease their evil deeds, and, by leading better lives, propitiate those whose duty it is to enforce the law. I have invoked public opinion to aid me in repressing these outrages, and in preserving peace and order. I have waited to see if the people of Alamance would assemble in public meeting and express their condemnation of such conduct by a portion of the citizens of the county, but I have waited in vain. No meeting of the kind has been held. No expression of disapproval even of such conduct by the great body of the citizens has yet reached this department; but, on the contrary, it is believed that the lives of citizens who have reported these crimes to the executive, have been thereby endangered, and it is further believed that many of the citizens of the county are so terrified that they dare not complain, or attempt the arrest of criminals in their midst. The civil officers of the county are silent and powerless.

The laws must be maintained. These laws are over all. Every citizen, of whatever party or color, must be absolutely free to express his political opinions, and must be safe in his own house. These outrages and these violations of law must and SHALL cease. Criminals must and shall be brought to justice. The whole power of both governments, state and federal, is pledged to this, and this power will be exerted. Criminals who may escape to counties adjoining Alamance will be pursued, and if not delivered up by the civil authorities of said counties, or if sheltered or protected in said counties with the knowledge of the civil authorities, the said counties will also be declared to be in a state of insurrection.

I earnestly appeal to all good citizens to aid the civil authorities in maintaining peace and good order, and to support me in my purpose to protect life and property without regard to party or color.

Done at the city of Raleigh, this 7th day of March, 1870, and in the 94th year of our independence.

W. W. HOLDEN, Governor.

By the Governor:

W. R. RICHARDSON, Private Secretary.

STATE OF NORTH CAROLINA,
Executive Office.

I, J. B. Neathery, private secretary to his excellency the governor, do hereby certify that the foregoing is a true and perfect copy of the original proclamation on file in this office.

Given under my hand the 30th day of January, A. D. 1871.

[Seal] J. B. NEATHERY,
Private Secretary.

Mr. MERRIMON. We also offer in evidence the proclamation issued by the accused, declaring the county of Caswell in insurrection.

Mr. Manager DUNHAM read the proclamation in the words following:

A proclamation by the governor of North Carolina.

EXECUTIVE DEPARTMENT OF N. C.,
Raleigh, July 8th, 1870.

In accordance with authority vested in me by the constitution of the state of North Carolina, and by virtue of an act passed at the last session of the general assembly, entitled "An act to secure the better protection of life and property," ratified the 29th day of January, 1870, I hereby declare the county of Caswell to be in a state of insurrection.

Done at our city of Raleigh this 8th day of July, 1870, and in the ninety-fifth year of our independence.

[Seal] W. W. HOLDEN, Governor.

By the Governor:

W. R. RICHARDSON, Private Secretary.

STATE OF NORTH CAROLINA,
Executive Office.

I, J. B. Neathery, private secretary to his excellency the governor, do hereby certify that the foregoing is a true and perfect copy of the original proclamation on file in this office.

Given under my hand the 30th day of January, A. D. 1871.

[Seal] J. B. NEATHERY,
Private Secretary.

Mr. MERRIMON. I now offer in evidence a certified copy of the order issued from the office of the adjutant general authorizing Kirk to recruit troops.

Mr. SMITH. Under what authority and by virtue of what law do you offer it?

Mr. MERRIMON. Under the rules of evidence. We have the original book here containing orders, but we offer a certified copy as being more convenient.

Mr. Manager DUNHAM read the order in the words following:

STATE OF NORTH CAROLINA,
Executive Department,
Adjutant General's Office,
Raleigh, June 21, 1871.

General Orders, No. 5.

Gol. George W. Kirk is hereby authorized and ordered to organize one regiment of state troops, to be designated the second regiment, to consist of not less than five nor more than eight companies of seventy-five men each.

Col. Kirk will call his regiment into active service to rendezvous as soon as possible at Morganton.

He is hereby authorized to contract for necessary supplies for his men while en route, taking vouchers for all sums contracted for or expended.

He will report progress every six days to this office.

By command of Governor Holden, commander-in-chief.

A. W. FISHER, Adj't Gen'l.

True Copy:

A. W. FISHER, Adj't Gen'l.

Mr. MERRIMON. We offer in evidence a certified copy of the order assigning Mr. A. D. Jenkins as paymaster.

STATE OF NORTH CAROLINA,
Adjutant General's Office,
Raleigh, July 11th, 1870.

Special Orders, No. 10.

Col. A. D. Jenkins, A. D. C., to commander-in-chief is hereby detailed for duty as paymaster and disbursing officer for North Carolina state troops, and will at once enter upon the discharge of the duties of his office.

By order of Governor Holden.

A. W. FISHER, Adj't Gen'l.

True copy:

A. W. FISHER, Adj't Gen'l.

Mr. MEBRIMON. I now offer in evidence an order by telegraph for Kirk to rendezvous his troops at Company Shops.

Mr. Manager DUNHAM read the paper offered in evidence in the words following:

Telegram.

RALEIGH, July 8th, 1870.

To Col. G. W. Kirk, Salisbury, N. C.

Rendezvous your men at "Co. Shops" and report here in person on Monday.

A. W. FISHER, Adj't Gen'l.

True copy:

A. W. FISHER, Adj't Gen'l.

Mr. MERRIMON. I offer in evidence an order to Kirk to take possession of public buildings, &c.

Mr. Manager DUNHAM read the paper offered in the words following:

STATE OF NORTH CAROLINA,
Adjutant General's Office,
Raleigh, July 13th, 1870.

Special Orders, No 11.

Col. G. W. Kirk, commanding 2d regiment North Carolina state troops will at once procure the necessary transportation for his camp equipage and proceed to Yanceyville and assume command of Alamance and Caswell counties.

He will take the necessary steps to preserve order, and to give the fullest protection to life and property.

He will take charge of the public buildings, and arrest and hold for examination persons accused of felonies, especially those charged with or of being accessory to the murder of J. W. Stephens and Wyatt Outlaw.

By command of Governor Holden, commander-in-chief.

A. W. FISHER, Adj't Gen'l.

True copy:

A. W. FISHER, Adj't Gen'l.

Mr. MERRIMON. We next offer in evidence the order to Douglas to muster Kirk's men into service.

Mr. Manager DUNHAM read the paper in the words following:

STATE OF NORTH CAROLINA,
Adjutant General's Office,
Raleigh, July 13, 1870.

Special Orders, No. 12.

Col. S. A. Douglas, A. D. C., will proceed to Company Shops immediately, and muster into service of state Colonel G. W. Kirk's regiment 2nd N. C. state troops.

By command of the Governor.

A. W. FISHER, Adj't Gen'l.

True copy:

A. W. FISHER, Adj't Gen'l.

Mr. MERRIMON. The next paper we offer is an order appointing Douglas acting adjutant general.

Mr. Manager DUNHAM read the paper in evidence in the words following:

EXECUTIVE DEPARTMENT,
State of North Carolina,
Raleigh, July 23, 1870.

Col. S. A. Douglas will, in absence of General A. W. Fisher, act as adjutant general, and attend to all the business coming within the sphere of that officer's duties.

W. W. HOLDEN, Governor.

True copy.
A. W. FISHER, Adj't Gen'l.

Mr. MERRIMON. We offer now another order proceeding from the office of the adjutant general.

Mr. Manager DUNHAM read the paper offered in evidence in the words following:

STATE OF NORTH CAROLINA,
Adjutant General's Office,
Raleigh, August 1, 1870.

General Orders No. 12.

The following is published for the information and guidance of the state troops. All officers and men will govern themselves accordingly.

I. A. D. Jenkins is paymaster to the brigade with the rank and pay of ———. It is his duty to pay the officers and men, to examine, approve or disapprove all accounts, and audit and pay the same when approved. He is required to file within five days with the adjutant general, his bond in the sum of $20,000.

II. Major R. T. Berry is brigade quartermaster with the rank and pay of major. His duty is to contract for and furnish all provisions, transportations, &c., for the brigade. He will submit all his accounts to the paymaster, and if approved they

ll be paid by the paymaster. Major Berry will file within ve days in this office his bond in the sum of $5,000.

III. John R. Harrison is depot quartermaster with the rank and pay of captain.

His duties are the ordinary ones of his position. He will file $5,000 bond.

IV. J. R. Rulifson is depot commissary with the rank and pay of 2nd lieutenant. He will perform the ordinary duties assigned him. He will file $5,000 bond. The attention of these and all other officers is particularly called to the facts that their accounts must be kept with the most severe accuracy for they will be exposed to the most rigid scrutiny, and that they will be held to the strictest accountability for all their faults and mistakes in the expending of the public funds.

By order of the Governor,

S. A. DOUGLAS, Act'g Adj't Gen'l.

True copy:

A. W. FISHER, Adj't Gen'l.

Mr. MERRIMON. The next paper we offer in evidence an order to Mr. Douglas to bear dispatches to Caswell.

Mr. Manager DUNHAM read the paper in evidence in t words following:

STATE OF NORTH CAROLINA.
Adjutant General's Office,
Raleigh, Aug. 11, 18

Special Orders, No. 15.

Col. S. A. Douglass, A. D. C., will proceed at once to ceyville, N. C., as bearer of dispatches from the comman chief.

By order of Governor Holden:

A. W. FISHER, Adjutant Ge

True copy:

A. W. FISHER, Adjutant General.

Mr. MERRIMON. The next is an order to Kirk ...on for pay.

Mr. Manager DUNHAM read the paper in evidence in the words following:

STATE OF NORTH CAROLINA,
Adjutant General's Office,
Raleigh, Aug. 15th, 1870.

Special Orders, No. 16.

Col. G. W. Kirk, commanding second regiment N. C. S. T., will at once muster his regiment for pay, and have the muster rolls properly made out in triplicate, and two copies forwarded to Colonel A. D. Jenkins, P. M. at this place.

By order of the Governor:

A. W. FISHER, Adj't. Gen'l.

True copy:

A. W. FISHER, Adj't Gen'l.

Mr. MERRIMON. The next paper is an order to officers to account for funds.

Mr. Manager DUNHAM read the paper in evidence in the words following:

STATE OF NORTH CAROLINA,
Adjutant General's Office,
Raleigh, Aug. 16, 1870.

Special Orders, No. 18.

All officers of the N. C. S. T. who have been furnished by the state with funds for expenses of recruiting service, will at once furnish to this office a final statement of their account of expenditures with vouchers.

By command of Governor Holden, commander in-chief.

A. W. FISHER, Adj't. Gen'l.

True copy:

A. W. FISHER, Adj't. Gen'l.

Mr. MERRIMON. We now offer an order removing Mr. Jenkins as paymester.

Mr. Manager DUNHAM read the paper in evidence in the words following:

STATE OF NORTH CAROLINA,
Adjutant General's Office,
Raleigh, Sept. 3, 1870.

Special Orders, No. 22.

Col. A. D. Jenkins, paymaster and disbursing officer of North Carolina state troops is hereby relieved from duty and will at once turn over to Maj. John B. Neathery, the money in his possession by virtue of his office as paymaster, and send to this office a final settlement of all his accounts.

By order of the Governor and commander-in-chief.

A. W. FISHER, Adj't. Gen'l.

True copy:

A. W. FISHER, Adj't Gen'l.

Mr. MERRIMON. The next order we introduce is one appointing Neathery paymaster.

Mr. Manager DUNHAM read the paper offered in evidence in the words following:

STATE OF NORTH CAROLINA,
Adjutant General's Office,
Raleigh, Sept. 3, 1870.

Special Orders, No. 2.

Maj. John B. Neathery, brig. inspector 1st brigade, will report to adjutant general for duty as paymaster of N. C. S. T.

By order of the Governor.

A. W. FISHER, Adj't Gen'l.

True copy:

A. W. FISHER, Adj't Gen'l.

Mr. MERRIMON. We offer in evidence an order to pay R. T. Berry $10,000.

Mr. Manager DUNHAM read the paper in evidence as follows:

STATE OF NORTH CAROLINA,
Adjutant General's Office,
Raleigh, Sept. 5, 1870.

Special Orders, No. 23.

Maj. J. B. Neathery, A. Paymaster, will turn over to Maj. R. T. Berry, A. Q. M. ten thousand dollars, and then proceed to Graham, N. C., and pay off the 2d Reg't N. C. S. T.

Maj. R. T. Berry will at once proceed to pay the 1st Reg't N. C. S. T.

By order of Gov. Holden.

A. W. FISHER, Adj't Gen'l.

True copy;
A. W. FISHER, Adj't Gen'l.

Mr. MERRIMON. The next paper we introduce is an order to Kirk to disband his men.

Mr. Manager DUNHAM read the paper in evidence in the words following:

STATE OF NORTH CAROLINA,
Adjutant General's Office,
Raleigh, Aug. 30, 1870.

General Orders, No. 13.

The commanding officer of the 1st and 2d regiments of N. C. S. T. will have made out immediately triplicate muster-out and descriptive rolls of their respective commands, one copy to be retained by company commander, one for paymaster, and one for this office.

Officers commanding companies will enter upon their rolls the money value of clothing issued to each member of the company, also amount of stoppages for arms, equipments, or camp equipage, lost or destroyed.

Regimental commanders will muster their respective commands on the first day of next month.

By order of Governor Holden, comd'r-in-chief.

A. W. FISHER, Adj't Gen'l.

True copy:

A. W. FISHER, Adj't Gen'l.

Mr. MERRIMON. The next paper is an order to Kirk to turn over the property to Berry, and to disband his men.

Mr. Manager DUNHAM read the paper in evidence in the words following:

ADJUTANT GENERAL'S OFFICE,
Raleigh, N. C., Sept. 7, 1870.

General Orders, No. 15.

Col. G. W. Kirk, comd'g 2nd reg't N. C. S. T., will cause the public property in his command to be turned in and safely stored and kept.

He will turn over to Maj. R. T. Berry, A. Q. M., the quartermaster property in his possession, except one two-horse team and one extra horse. He will direct the several companies of his regiment under command of their respective officers to proceed as soon as paid to place of enlistment, and there to be disbanded. Quartermaster Berry will furnish the necessary transportation on railroad to point nearest to place of enlistment.

By order of Governor Holden, commander-in-chief.

A. W. FISHER, Adj't Gen'l.

True copy:

A. W. FISHER, Adj't Gen'l.

Mr. MERRIMON. We now introduce another order to Kirk disbanding his force.

Mr. Manager DUNHAM read the paper in evidence in the words following:

STATE OF NORTH CAROLINA,
Adjutant General's Office,
Raleigh, N. C., Sept. 16, 1870.

Special Orders, No. 28.

Col. G. W. Kirk, 2nd reg't N. C. S. T., will at once have the ordnance stores and clothing, camp and garrison equipage in his command, properly packed and forwarded to adjutant general at this place.

Col. Kirk will have made out muster and pay rolls of his command, and as soon as paid off will muster out of service those living in vicinity, and direct the others to proceed under command of company officer to place of enlistment, and there to be disbanded.

As soon as practicable, Col. Kirk will report to the governor in person.

By order of Gov. Holden.

A. W. FISHER, Adj't Gen'l.

True copy:

A. W. FISHER, Adj't Gen'l.

Mr. MERRIMON. We offer now an order relieving Kirk from duty.

Mr. Manager DUNHAM read the paper in evidence in the words following:

STATE OF NORTH CAROLINA,
Adjutant General's Office,
Raleigh, Sept. 30, 1870.

Special Orders, No. 32.

Col. G. W. Kirk, 2nd reg't N. C. S. T. is hereby relieved from duty and directed to make final returns at once of public property put in his charge.

By order of Gov. Holden.

A. W. FISHER, Adj't Gen'l.

True copy:

A. W. FISHER, Adj't Gen'l.

Mr. MERRIMON. We now offer in evidence special order No. 9, reading it from the book as we have not a copy of it made.

Mr. Manager DUNHAM read the order in the words following:

STATE OF NORTH CAROLINA,
Adjutant General's Office,
Raleigh, July 9, 1870.

Special Orders, No. 9.

Captain J. R. Harrison, Post Q. M. Raleigh, will issue provisions to families of men enlisted in state troops on order of the soldier, approved by his company commander.

The amount issued will not exceed eight dollars per month on order of one man.

An accurate account of amount issued will be kept with man giving order.

By direction of Gov. Holden.

A. W. FISHER, Adj't Gen'l.

Mr. MERRIMON. We now offer in evidence the muster rolls of Kirk's men.

Objected to on the ground that the papers had not been properly proven.

ABIEL W. FISHER, *a witness called on behalf the managers being duly sworn, testified as follows:*

By Mr. MERRIMON:

Q. Look at the papers now shown you and state what they are? A. They are muster rolls.

Q. What muster rolls? A. The muster rolls of Col. Kirk's command known as the 2nd regiment of state troops.

Q. What is your office? A. Adjutant general of the state.

Q. State where these muster rolls came from? A. They were sent to me from Col. Kirk's command, I think by the hands of Major Neathery.

Q. I mean where did they come from directly now? A. They came from my office.

Q. You recognize them as muster rolls of the 2nd regiment of state troops? A. I do.

Q. Commanded by Kirk? A. The same.

Mr. MERRIMON. We shall want to recall the witness. We produced him now only to identify the papers.

Mr. MERRIMON. We now offer in evidence description and pay roll of company G. 2nd regiment state troops.

Mr. Manager DUNHAM proceeded to read the names on the list and had reached the fourth name.

Senator GILMER. Mr. Chief Justice, I desire to enquire of the board of managers whether it is necessary to read such lengthy documents for the purpose of establishing their case.

Mr. Manager SPARROW. Mr. Chief Justice, it is necessary to read these documents to show the fact alleged that a large number of the enlisted men in this force were from the state of Tennessee. The enlistment of such men, we contend, is not in accordance with the constitution and laws of this state. It is a circumstance going to show that these troops were unlawful troops. Further than that, the constitution provides that the militia of the state shall be composed of men between the ages of twenty-one and forty, and we desire to show that many of these troops under Kirk were under the one and over the other limit as to age.

The CHIEF JUSTICE. The presiding officer thinks that you might consider the whole of the documents in evidence and read such portions as may be desired.

Mr. MERRIMON. We are willing if the other side will permit us to do so.

Mr. BOYDEN. Mr. Chief Justice, I desire to know whether all these papers are to be printed, so that we can have an opportunity to see them?

Mr. MERRIMON. They will be filed.

Mr. BOYDEN. But we can't go to the files. If the papers are to be printed we have no objection to your reading such as you desire to call particular attention to.

Mr. BRAGG. Mr. Chief Justice, as I understand the rules adopted by the court, all evidence offered here will be printed and laid upon the desks of members and counsel on either side. It will be very voluminous, but still under the rules I suppose it will all have to be printed. I only make this remark for the purpose of eliciting information. If it is to be printed, the respective counsel and the members of the court can then refer to it afterwards.

Mr. BOYDEN. It will not be necessary to read all these documents now.

The CHIEF JUSTICE. As the presiding officer understands it, the object of printing was to save the time of reading them.

Mr. BRAGG. I will state further, Mr. Chief Justice, that as far as my observation extends in reading the impeachment trial of President Johnson, the course suggested here was the one pursued there. A large number of documents were put in evidence without being read, such as tables, lists of officers, &c., it being suggested that on account of being printed they were in a form for reference, and therefore need not be read.

The CHIEF JUSTICE. It might be well to read one or two of the rolls to show the general fact, and then let them be printed.

Mr. Manager DUNHAM read from one of the rolls the names, rank, and birth-place of the officers and men.

Mr. MERRIMON then put in evidence the descriptive and pay rolls and roster of the second regiment North Carolina troops, which will be found printed in the appendix.

Mr. BOYDEN. Mr. Chief Justice, we desire it noted that these documents are admitted on the express understanding that they are to be printed and laid on our tables. Otherwise we cannot consent to their admission.

The CHIEF JUSTICE. That is the understanding.

Senator TROY moved that the sitting of the court this day be continued till half past three o'clock.

A sufficient number seconding the motion (as required by the rules on a proposition to extend the time of a session),

The CHIEF JUSTICE put the question on the motion. Before the decision on the vote was announced the yeas and nays were called for. A sufficient number seconding the call they were ordered.

The CLERK proceeded to call the roll on the motion of Senator Troy, and it was decided in the affirmative by the following vote:

Those who voted in the affirmative are:

Messrs. Adams, Albright, Allen, Brown, Cook, Council, Cowles, Crowell, Currie, Dargan, Edwards, Flemming, Gilmer, Graham of Alamance, Graham of Orange, Latham, Ledbetter, Linney, Love, Manney, McClammy, Merrimon, Moore, Morehead, Murphy, Robbins of Davidson, Robbins of Rowan, Skinner, Speed, Troy, Waddell, Warren, Whiteside and Worth—34.

Those who voted in the negative are:

Messrs. Barnett, Battle, Beasley, Bellamy, Brogden, Eppes, Flythe, Hawkins, Hyman, King, Lehman, McCotter, Norment and Price—14.

Mr. MERRIMON offered in evidence a certified copy of the proceedings on *habeas corpus* before the chief justice of the supreme court, the same being certified by the clerk of the supreme court.

Mr. BOYDEN. The papers spoken of are not a part of the records of the supreme court, and there was no authority for the clerk to certify to them.

Mr. MERRIMON. Allow me to read the certificate of the clerk.

"STATE OF NORTH CAROLINA,
"Office of the Clerk of the Supreme Court,
"Raleigh, January 30th, 1871.

"I hereby certify that the foregoing are true copies of the

"original papers in the cases of *habeas corpus* disposed of
"chambers by Chief Justice Pearson growing out of milit
"arrests during the months of July and August, 1870, s
"papers having been filed with me for safe keeping by
"honor, the chief justice.

"In witness whereof I hereto set my hand at office at t
"date aforesaid.

"W. H. BAGLEY, Clerk."

We have the orginals, as the clerk was summoned to prod
them. I think there is no question about these being t
copies.

Mr. SMITH. Mr. Chief Justice, you will observe that t
statute regulating the introduction of evidence of this kin
restrictive. Section 8 of the code provides that "copies of
"official bonds or writings recorded or filed as records in a
"court, or lodged in the office of the governor, treasurer, cor
"troller, or secretary of state, shall be competent evidence
"the originals, when certified by the keeper of such reco
"or writings under the seal of office, when there is such s
"or under his hand when there is no such seal, unless the co
"shall order the production of the original."

These papers are in no sense records of the office, and th
is no authority on the part of the officer to certify them.

Mr. MERRIMON. The clerk of the supreme court
been in attendance, but he has gone to his dinner without
permission. We will take up another branch of the case.

WILLIAM LARKIN, *a witness called on behalf of managers, being duly sworn, testified as follows:*

By Mr. MERRIMON:

Q. What is your office? A. I am clerk of the Cape F
district of the United States court for the district of No
Carolina.

Q. Look at the papers which you have and state what t
are? A. These are papers in connection with the *habeas cor*

proceedings at Salisbury at the last August term of the court.

Q. How did they come in your possession? A. They were handed to me on the occasion of the trial.

Q. By whose order? A. They came into my hands as clerk of the court.

Q. United States district court? A. Yes, sir.

Mr. MERRIMON. Mr. Chief Justice, I offer the papers produced by the witness in evidence, being the proceedings in the several matters of *habeas corpus* determined before his honor Judge Brooks.

Mr. BOYDEN. I desire to know in what view the papers are offered.

Mr. MERRIMON. Mr. Chief Justice, they are pertinent in this case in this point of view. The accused stated in a letter to his honor the chief jussice, that the time had arrived when he thought it was prudent to have the prisoners who had been arrested, surrendered upon the writ issued by the chief justice, and that he had ordered their surrender. We offer these proceedings in connection with other facts and circumstances to show that he did not write that letter to the chief justice of his own free will, but that he was driven to do so for fear of the action of the federal judge.

Mr. BOYDEN. Mr. Chief Justice, it strikes me that the papers have no such bearing on the question before the court. I look upon them as wholly incompetent to affect any issue in this case, and as not bearing upon any point raised by the answer of the respondent. So far as I can see, they are wholly irrelevant, and if admitted they can have no tendency whatever to establish the facts which the counsel for the managers allege. It seems to me that they are clearly incompetent.

Mr. BRAGG. Mr. Chief Justice, we think that the evidence is not only competent but is very material to some of the issues which have been joined in this proceeding. It is a rule of evidence that what takes place between other parties is not evidence. That is the general rule, and we admit its force. But we say that, upon some of the charges here, these proceed-

ings before the United States district judge now offered in evidence are not only competent, but are very material to one of the issues which are involved in this case. We shall show by evidence that there were certain proceedings on *habeas corpus* pending before the chief justice of the supreme court of this state for the release of certain parties who were held in custody, and that the respondent refused obedience to the mandate of the chief justice, which called upon his agent to cause the prisoners to be brought before that judicial officer. We shall show that the accused detained those prisoners and continued to detain them; and we expect to show that after he had refused to yield obedience, which it was his duty to yield, by the constitution and laws of the state, steps were taken, (which will appear in these proceedings,) for the release of those parties before another judge, and that thereupon the accused appealed to the president of the United States directly to aid him in his refusal to obey the mandate of the judge of the United States district court for the district of North Carolina; and then, finding that he was not sustained in that appeal and receiving a message to the effect that it was his duty—as we expect to show, to yield obedience to the judge of the district court, after the time had elapsed which was allowed under the act of congress, to wit, ten days, for the return of the writ of *habeas corpus* issued by the district judge—at the last moment—the accused discovered that "the time had come" for him to bring the prisoners before the chief justice in obedience to the writ.

It has been stated in the opening of the chairman of the board of managers that, in what the accused there stated, he did not state the truth—that the statement in the letter that the time had come when it was safe to surrender the prisoners, was a mere pretext—an after-thought; that, in point of fact, he had no alternative but to obey the writ of the chief justice; that he preferred to bring them before the chief justice rather than go before another judge; and that he did so, not because he was disposed to do his duty and submit to the

laws of the land. We offer this paper as evidence showing that he held out as long as he could; that he first refused to yield obedience to the chief justice of the supreme court of our own state, and that he then endeavored to get the sanction and support of the president of the United States to resist the mandate of the United States district judge; and that failing in that, at the eleventh hour he made a virtue of necessity and said the time had come for him to yield obedience to the civil authorities of the state. We ask, therefore, those papers be admitted as throwing a flood of light on the real motive which actuated the accused; and in that view, we think they are entirely relevant and proper.

Mr. BOYDEN. Mr. Chief Justice, it will be recollected by the court that there is not one word said in the articles of impeachment about writs of *habeas corpus* issued by the federal judge. And what is the ground which they now urge for the admission of this testimony? It is that the chairman of the board of managers in his opening speech has stated that this was not fair dealing, that the accused did not surrender these persons in obedience to the mandate of the chief justice of the supreme court, but that he surrendered them because a certain other judicial authority had issued a writ commanding him to bring these prisoners before it, and that the accused waited as long as the law permitted him to wait before producing the prisoners. Was there anything wrong in that? Had he not the right to wait as long as the law stated he might wait before making his return? He made it in due time to the proper authority. How can that, I should like to know, establish a motive in the accused? How can it have any tendency to show the motive which, they allege, caused him to surrender the prisoners? It is totally inapplicable. It is a transaction before another court wholly disconnected with the proceedings here, and with any charges which are preferred here. The managers might as well go into other transactions of the respondent's life to show his motive in surrendering those prisoners, as to attempt to give the proof which is now pro-

posed. The proof offered is totally irrelevant, and I cannot see how such a question can be pressed before the court of such intelligence as that which now sits on the trial of the respondent.

Mr. GRAHAM. Mr. Chief Justice, in regard to setting forth in the articles of impeachment, statements in reference to these proceedings on *habeas corpus* before the federal judge, I answer that it is not to be expected that the managers would state in these articles every item of evidence they expect to introduce. It is sufficient that they sustain the charges by such evidence as is pertinent to the issue which has been joined. The respondent has identified himself with this man Kirk. We have the evidence to show that he brought him here and invested him with a command, and that when the law was attempted to be applied to Kirk by a judge of a court in this state, the respondent justified him in resisting the mandate. Anything, therefore, that took place between Kirk and anybody else, after we have fixed upon the respondent the responsibility of Kirk's acts, is evidence against the respondent. We will show that the respondent telegraphed to the president of the United States in relation to these very proceedings before Judge Brooks, that he got no countenance for the course which he was taking, and that then it was he determined to obey the writ issued by the state court. We say that if this writ of *habeas corpus*, issued by Judge Brooks, was served upon Kirk, it was the same thing as if it were served upon the respondent, for Kirk was his agent, his emissary, brought here to do certain acts, and that anything that took place between Kirk and any other person, whether in the nature of a judicial proceeding or communication of any sort, is competent evidence against the accused.

The evidence is pertinent also in another point of view. It is part of the *res gestæ* of this drama which has been enacted in North Carolina for months in the imprisonment of citizens of the State by Kirk. This proceeding on the part of the

respondent was nothing more nor less than a pretence of performing his duty after he had stood out with persistency as long as he saw there was nothing but the authority of the state of North Carolina to control him. We offer to show that another authority for which he had a greater dread, if not a greater respect, was behind him pushing him on with its bayonets, and compelling him to perform his duty, and that that was the reason why he finally did perform his duty, and allow the men whom he held to come before Judge Brooks, and that it was to cover his retreat from the position in which he had placed himself, he got up this proceeding of informing the chief justice of the state that he was then ready, as he always had been, when, in his judgment, the proper time had arrived to surrender these men.

Notwithstanding the earnestnesss of the honorable gentleman on the other side [Mr. Boyden] we have every confidence that the evidence offered is competent, and that this court has a right to consider it in determining the question of the guilt or innocence of the respondent upon the charges preferred against him.

Mr. SMITH. Mr. Chief Justice, this case now stands upon the allegations made in the articles which are before the senate and the proofs ought to be in support of those allegations. I say here that there is not one allegation from the beginning to the end in these articles in reference to the subject matter to which this proof is offered. It is an attempt in advance to disprove exculpatory evidence and not to establish the truth of the charges, which is all that the prosecution can now do. It is an effort to anticipate with a view of defeating evidence which may be offered on the part of the respondent.

Again, sir, it is alleged here that a writ of *habeas corpus* was issued by a district judge of the United States which was obeyed; and it is proposed to offer the fact of the obedience of the accused to that writ as evidence going to prove his disobedience of another writ for which disobedience he is here arraigned. In other words, an act of duty is offered here as

evidence showing the fact of a disobedience of law on another occasion. Has that any relation to the controversy here? Does it tend to show the acts which we are now enquiring into to be right or wrong that the accused recognized and obeyed the authority of the United States, or if you please, that he has obeyed the authority of this senate in citing him here to answer these charges? Does it tend at all to show his guilt as to the charges which are made against him in the articles of impeachment which we are trying? The effort is to prove that he acted elsewhere in obedience to the law. The point which the respondent makes here is that there is nothing in the allegations throughout the various articles authorizing the introduction of any such evidence as this. There is no issue now pending upon which they can rightfully offer it. It will be sufficient for them to offer it when some affirmative evidence is offered on the part of the accused to which the proof is responsive. Our objection, therefore, Mr. Chief Justice, is that this evidence is not warranted by any charge contained in the articles, and is not authorized by anything averred; and nothing is clearer than that the proof must be warranted by the allegations. And, in the next place, it is totally immaterial how obedient and respectful the respondent may have been to one officer, in trying him upon a charge of violating of his duty to another.

For these reasons, the counsel for the respondent regard this testimony as inadmissable.

Mr. MERRIMON. Mr. Chief Justice, every single charge with respect to these arrests contains an allegation that the arrests were made willfully, corruptly and for the purpose of oppression on the part of the accused. He denies that, and alleges in his answer that his action was not willful and not corrupt. He says that he was acting in the honest discharge of his duty; and he says that when the time came when it was prudent, proper and safe for him to surrender the prisoners from custody he did so of his own free will and in the exercise of an honest judgment and from pure motives. That, sir, becomes

a material question. Will the learned gentlemen contend that it is not competent for us to show any fact which will illustrate the motive of the respondent's acts in surrendering these prisoners at the time he did? And this evidence is offered with the view to show the motive of the accused in making that surrender to the chief justice of this state, and to satisfy this court that the surrender was not made in the honest exercise of his judgment. We contend that the proof offered tends to show that he was forced to do as he did, and that he would not have made the surrender if he could have avoided it. It tends to show the corrupt motive which actuated his mind at that time, and it seems to me clear that, in that point of view, in addition to the considerations suggested by my associate counsel, that the evidence is, beyond question, competent.

The CHIEF JUSTICE. The presiding officer is of the opinion that the papers offered are admissable as showing the motive and also the animus of the accused at the time of the detention.

Senator MOORE. Mr. Chief Justice, I desire that the point raised shall be decided by court. To that end I ask for the yeas and nays.

A sufficient number seconding the call, the yeas and nays were ordered.

The CLERK proceeded to call the roll of members upon sustaining the decision of the chief justice.

Before the vote was announced Senator Graham, of Orange, rose to a question of order, stating that the rules required that every senator should vote upon questions submitted for determination unless excused therefrom. He asked therefore that the name of the senator from Wake [Mr. Olds] should again be called.

The CHIEF JUSTICE. Was the senator within the bar when the roll was called?

Senator GRAHAM, of Orange. I so understand.

The CLERK again called the name of Mr. Olds, whereupon he voted yea.

The CLERK announced the vote.

Those who voted in the affirmative, are:

Messrs. Adams, Albright, Barnett, Battle, Beasley, Brogden, Brown, Cook, Council, Crowell, Currie, Dargan, Edwards, Eppes, Flemming, Gilmer, Graham of Alamance, Graham of Orange, King, Latham, Ledbetter, Lehman, Linney, Love, Mauney, McClammy, McCotter, Merrimon, Morehead, Murphy, Norment, Olds, Robbins of Davidson, Robbins of Rowan, Skinner, Speed, Troy, Waddell, Warren, Whiteside and Worth —41.

Those who voted in the negative, are:

Messrs. Bellamy, Flythe, Moore and Price—4.

So the decision of the chair was sustained.

Mr. MERRIMON. Mr. Chief Justice, we propose to put these papers in evidence, but not to detain the court by reading them now. I would suggest, further, that as these papers belong on the files of the United States district court under the order of its judge and the clerk desires to retain the originals, he leave the copy, which I suppose will be the regular course.

The CHIEF JUSTICE. That will be the regular course.

Mr. MERRIMON. Do the counsel for the respondent insist that we shall read the originals now? One is a sample of the whole.

Mr. SMITH. Before the papers are read in evidence we would like to cross-examine the witness briefly.

The CHIEF JUSTICE. That is in order.

WILLIAM LARKIN—*Cross-examination.*

By Mr. SMITH:

Q. Where did those papers produced here come from? A. They came from the records of the Cape Fear district court at Wilmington.

Q. Where did you get them? A. I got them from the attorneys on the occasion of the trial at Salisbury.

Q. They were handed to you by some attorneys at Salisbury? A. Yes, sir; the papers came into the hands of the clerk.

Q Were you there acting as clerk at that time? A. I was.

Q. The court was sitting in the Cape Fear district? A. A special term was held in August and September at Salisbury.

Q. This is not a record of any thing that occurred before the court—it was a proceeding in chambers? A. No, it was not a proceeding in chambers, it was a regular term of the court.

Q. Was the judge sitting as a court when these proceedings took place with these papers? A. I understand him to have been sitting and holding a court.

Q. Was he holding a district court at the time these proceedings took place, or was he sitting in chambers? A. I understand the court was in session, and that the judge was presiding.

Q. Are these papers recorded among your records? A. Yes, sir.

Q. Are they not merely filed? A. Yes, sir; they are filed.

Q. Had not the district court adjourned, and the judge returned for the purpose of taking up these *habeas corpus* cases? A. There was one term of the court held at Salisbury, and then the judge went from there to Morganton and held another term, and then came back to Salisbury, where these cases were heard.

Q. When he returned to Salisbury, did he hold a district court or was he not merely sitting in chambers. A. He held a district court—as I understand it. I may be mistaken about that. That is a legal question. It might have been in chambers.

The CHIEF JUSTICE. I suppose the papers tell whether he was holding a court or setting in chambers.

Mr. MERRIMON. As we understand it, the judge was sitting in chambers and the clerk was along with him. The clerk therefore supposed that the judge was holding a regular term. We simply desire to read one case.

Mr. BOYDEN. If you read one you should read the whole.

Mr. MERRIMON. We only ask to put in evidence one case, that of Adolphus G. Moore, James E. Hunter, and James S. Scott—the petition, writs, return and order. There will be no necessity of putting in the others.

Mr. McCORKLE. Mr. Chief Justice, I did not understand this consent to be that these petitions and returns were to be admitted as evidence unless the proof of the genuineness of them had been fully established. In this case, we insist that the managers must prove by the clerk here if the petition was taken out before him, that it was issued, and if the return was made by some other person it must be proved by that person, because it was not a matter of record. Suppose now it turns out, as I see by the papers it does, that the return of Col. Kirk was not sworn to nor made before the clerk but before a United States commissioner, then it is patent that, as these proceedings were not before a court of record, they cannot be introduced until they offer proper evidence as to the genuineness of the documents. They must produce the parties before whom they were sworn to.

Mr. MERRIMON. The Chief Justice and senators will notice that we have offered this evidence out of its order because a witness we designed to call had gone to his dinner. We beg leave to withdraw the offer for the present and we will renew it to-morrow, selecting such parts as we want to put in evidence.

Senator GRAHAM, of Orange, submitted the following order:

Ordered, That on and after Monday next, February 6th, 1871, the hour for the sitting of the senate as a court of impeachment shall be 11 A. M.

JOHN B. NEATHERY, *a witness on behalf of the Mangers, being duly sworn, testified as follows:*

By Mr. MERRIMON:

Q. What is your business? A. I am the private secretary of Governor Caldwell at the present time.

Q. Look at this book produced here and state if you have seen it before, and if so, state what it is? A. That is the letter-book of the governor.

Q. What Governor? A. Governor Holden.

Q. Is that kept in the custody of the private secretary? A. Yes, sir.

Q. Do you recognize that as the governor's letter book? A Yes, sir.

Mr. MERRIMON. We desire to state that we shall call this witness again. We simply called him at the present time to identify the book. We now offer in evidence the letter of the respondent to President Grant asking for a suspension of the writ of *habeas corpus*, &c.

Mr. Manager DUNHAM read the letter.

Mr. SMITH. Mr. Chief Justice, the letter which has been read turns out to be subject to a grave objection. It refers to some accompanying documents which we think are part of that letter, and we contend that the letter is not admissible without the production of those accompanying documents which may be, and I suppose are, explanatory of its statements.

Mr. GRAHAM. Mr. Chief Justice, nothing has been read but the letter itself, for the obvious reason that the accompanying documents are not accessible to us. The executive letter book was placed in the hands of the managers but recently, and they have read so much as they have found. If the accused has not chosen to keep copies of the accompanying documents in his office, or if he has kept them and has not chosen to send them to this body, that is no reason for excluding the letter. This letter is evidence of the admissions made by the accused which we are entitled to, to that extent.

Mr. SMITH. Mr. Chief Justice, unquestionably this original paper is in the executive office in Washington city. Our objection is that a portion of that correspondence—a fragment

STATE OF NORTH CAROLINA,
Executive Department,
Raleigh, March 14, 1870.

To the Senators and Representatives in the Congress of the United States from North Carolina.

Gentlemen: I have been compelled to declare the county of Alamance in a state of insurrection. I have called on the President for aid, but he is restricted by the right of the writ of *habeas corpus*. We want military tribunals, by which assassins and murderers can be summarily tried and shot, but we cannot have these tribunals unless the president is authorized to suspend the *habeas corpus* in certain localities. Please aid in conferring this power on the president as the only effective mode of protecting life and property in Alamance and other localities in this state.

Very respectfully,

[Seal.] W. W. HOLDEN, Governor.

True copy:

J. B. NEATAIRY, Private Secretary.

Mr. MERRIMON. We also offer in evidence a certified copy of a telegram from the respondent to Mr. Abbott, United States senator.

Mr. Manager DUNHAM read the telegram in the words following:

(Telegram.)
STATE OF NORTH CAROLINA,
Executive Department,
Raleigh, March 17, 1870.

Hon. J. C. ABBOTT, U. S. Senator, Washington, D. C.

What is being done to protect good citizens in Alamance county? We have federal troops but we want power to act. Is it possible the government will abandon its loyal people to

be whipped and hanged The *habeas corpus* should be at once suspended. Will write you to-morrow.

[Seal.] W. W. HOLDEN, Governor.

True copy:

J. B. NEATHERY, Private Secretary.

WILLIAM H. BAGLEY, *a witness called on behalf of the managers, being duly sworn testified as follows:*

By Mr. MERRIMON.

Q. What is your business? A. I am clerk of the supreme court of North Carolina.

Q. Look upon the papers before you and state what they are? A. I have before me the several applications in the case of James E. Boyd, James S. Scott, James E. Hunter and Adolphus G. Moore, of the county of Alamance, and John Kerr and others in the county of Caswell for writs of *habeas corpus*, a d the writs in each case and the rulings of the chief justice.

Q. How did you become in possession of them? A. They were deposited with me by the chief justice for safe keeping.

Q. With you as the clerk of the supreme court? A. I am not prepared to say that they were deposited with me as clerk of the supreme court. I suppose they would not have been deposited with me if I had not been clerk. I do not consider that the care of them comes within the discharge of my clerical duties.

Mr. MERRIMON. We ask leave to read the papers in evidence.

COUNSEL for the respondent objects to the introduction of the papers as not properly proven.

Q. Do you know the handwriting of the chief justice? A. I do.

Q. Have you seen him write? A. Yes, sir, I have seen him write a good deal.

Q. Look at the signature purporting to be the signature of

the chief justice and say whether it is his? A. Which one do you mean?

Q. To all of them?

Senator MOORE. Mr. Chief Justice, the hour has arrived for adjournment.

The CHIEF JUSTICE. The rule is peremptory, the court stands adjourned until to-morrow at 12 o'clock.

SEVENTH DAY.

SENATE CHAMBER, Feb. 3, 1871.

The COURT met at 12 o'clock, M., pursuant to adjournment, Honorable R. M. Pearson, Chief Justice of the Supreme Court, in the chair.

The proceedings were opened by proclamation made in due form by the doorkeeper.

The CLERK proceeded to call the roll of senators, when a quorum was found to be present.

Senator GRAHAM, of Orange, moved to dispense with the reading of the journal.

The CHIEF JUSTICE put the question on the motion of Senator Graham, and it was decided in the affirmative.

WILLIAM H. BAGLEY, *a witness called on behalf of the managers, (direct examination resumed.)*

By Mr. MERRIMON:

A. State whether you have the papers now which were before you yesterday when you left the stand? A. They are the same papers.

Q. Have you examined them? A. I have.

Q. Have you examined particularly the signature purporting to be that of the chief justice. A. I have.

Q. At every place where his signature purports to be that of the chief justice, is it his genuine signature? A. I am satisfied of it.

Mr. MERRIMON. Mr. Chief Justice, we propose now to read these papers in evidence.

Mr. BOYDEN. Mr. Chief Justice, if the managers merely propose to read what you, sitting in your judicial capacity, have signed, we have no objection. We made the objection yesterday that they could not read the returns without proving the officer before whom the returns were made and sworn to. I

suppose that they propose to read the whole of the papers and therefore we raise the point now.

Mr. MERRIMON. We propose to read from a copy as it is more convenient.

The CHIEF JUSTICE. The presiding officer will announce that he has received a communication from Messrs. Abbott, Pool and Dockery in reference to the subpœna served upon them. The clerk will read it in order to put the communication in possession of the court.

The CLERK read the communication in the words following:

WASHINGTON CITY, D. C.,
January, 30th, 1871.

Chief Justice Pearson, Presiding in the Court of Impeachment at Raleigh, N. C:

SIR: We have been shown a summons purporting to be signed by the clerk of the senate of North Carolina, for us to appear and testify before the court of impeachment.

We are members of the congress of the United States now in session and are in attendance upon its sittings. Our official duties, especially in these closing weeks of the session, require our uninterrupted presence at the capitol.

We therefore respectfully request that the usual and prescribed mode of obtaining the testimony of any member of either house of the congress of the United States, while attending upon its sittings, be pursued. We will cheerfully give evidence in the case before the court of impeachment, either upon interrogation in writing or before any commissioner or other person authorized by the court to take it, in this city.

Most respectfully,

JOHN POOL,
JOSEPH C. ABBOTT,
O. H. DOCKERY.

Mr. Manager DUNHAM proceeded to read the petition of John Kerr, in words following:

STATE OF NORTH CAROLINA,

To the Honorable Richmond M. Pearson, Chief Justice of the Supreme Court of North Carolina:

The petition of John Kerr, Samuel P. Hill, N. M. Roane, Robert Roan, F. A Wiley, James C. Williamson, William B. Bowe, Yancey Jones, A. G. Yancey, Thomas J. Womack, James R. Fowler, J. C. Griffith, A. A. Mitchell, J. T. Mitchell, M. Z. Hooper, John McKee, J. M. Neal and Barzillian Graves, respectfully showeth unto your honor that they are each citizens of the county of Caswell in said state; that on Friday, the 18th day of July, A. D. 1870, while each of them was about his lawful business and in no way violating the laws of the land, he was arrested by a body of armed men purporting to act under the command of one George W. Kirk, who claimed to act as a military officer; that they were each delivered by said body of armed men into the custody of the said George W. Kirk, and he gave them to understand that they were arrested by his order; that the said George W. Kirk now has your petitioners in his custody, and holds and deprives them of their liberty in the court house in Yanceyville in said county; that they demanded to know by what authority each had been arrested, and no authority was given; that they are each informed that no warrant or legal process issued by any lawful officer, or indeed any one commanding their arrest; that their said arrest was without authority of law; that they each speaking for himself, say that they are not aware of any cause for such arrest; that they are civil and law-abiding citizens; that said arrest was without warrant or authority; that such arrest and detention is illegal because made without any lawful precept, and for no alleged offence or any offence so far as petitioners know; that the matter of their said arrest has not been examined and adjudicated upon any writ of *habeas corpus* heretofore issued to the knowledge of your petitioners; that each of your petitioners has been so arrested and is so detained by the said George W. Kirk and deprived of his liberty and against his will; that said

arrest was made without cause so far as each knows and without any process of law.

In consideration of the premises may it please your honor to grant unto each of your petitioners the writ of *habeas corpus*, to be directed to the said George W. Kirk, commanding him to produce each of your petitioners before your honor, together with the cause of such arrest and detention, to the end that each of your petitioners may be restored to his rights and liberties as a citizen of the state.

(Signed,) BRAGG, BATTLE, MOORE, AND MERRIMON,
ATTY'S for Petitioner.

Mr. MERRIMON. We now read the affidavit of Emory B. Holden.

Mr. BOYDEN. Sworn to before whom?

Mr. MERRIMON. Before L. D. Harrison.

Mr. BOYDEN. We submit that it should first be proven.

Mr. GRAHAM. We do not so understand the rule. We understand that where the return is made before a judicial officer and there is no objection at the time that it is not made upon proper evidence or upon proper service, and an adjudication thereon takes place by that judicial officer, that every thing he has ratified is ratified elsewhere. Otherwise in offering evidence of a judicial proceeding it would be necessary to produce all the witnesses before the reviewing tribunal that were produced before the original. We say that the judicial magistrate before whom the proceeding takes place, being satisfied that it was based upon sufficient evidence, that fact concludes the matter and it becomes a *quasi* record; that his approbation of the matter is to be taken as showing that is was based upon what was satisfactory to him and if satisfactory to him it is not to be enquired into elsewhere.

Mr. BOYDEN. Mr. Chief Justice, we understand that to be the case as to a court of record, but we do not understand that the doctrine at all applies to anything but to proceedings in a court of record. It is well known to the chief justice and to most of the senators that the rule has been totally different in

our courts. Our courts have always required when a suit is brought upon a judgment before a magistrate—at least that has been my experience—that you prove the handwriting of the magistrate who issued the warrant. If it is returned before a different magistrate, and that different magistrate gives judgment it has always been required to prove his handwriting. We do not turn to a decision and say, "here is a *quasi* record." That law has never been sustained in North Carolina. It is contrary to the principles of the common law. I know of no ground whatever upon which this return can be made evidence in this case, except by taking the original and proving the handwriting of the party signing it, and of the magistrate who swore him to the return.

The CHIEF JUSTICE. It is not the return that is offered, it is the affidavit necessary to take out the writ.

Mr. BOYDEN. I was laboring under a mistake. I thought the offer was to read the return. However my remarks will apply to the offer of the return when it shall be made. We do not oject to the affidavit.

The CHIEF JUSTICE. It is the affidavit which the chief justice passed upon before he issued the writ.

Mr. Manager DUNHAM read in evidence the affidavit as follows:

STATE OF NORTH CAROLINA,
Wake County.

Emory B. Holden, attorney for the petitioners named in the foregoing petition, makes oath that he has heard read the said petition; that he saw said petitioners in the custody of the said George W. Kirk, in the court house at Yanceyville, and knows that the said Kirk so holds and detains each of said petioners; that he verily believes that the facts stated in the petition are substantially true as stated; that he knows the petitioners, and learned the facts as stated from actual observation, and what he heard from them and others.

(Signed) E. B. HOLDEN.

Sworn and subscribed before me the 21st day of July, A. D. 1870.

(Signed) L. D. HARRISON, [J. P.]

Mr. Manager DUNHAM read in evidence the petition of Peter H. Williamson in the words following:

STATE OF NORTH CAROLINA,

To the Honorable Richmond M. Pearson, Chief Justice of the Supreme Court of North Carolina:

The petition of Peter H. Williamson respectfully shows to your honor that he is a citizen of the county of Caswell in said state—that on Thursday the 21st day of July, 1870, he was arrested in said county by armed men purporting to be acting under the authority of one George W. Kirk, and that he is now, and has been ever since detained in custody in said county by the said Kirk or by persons under his authority, against the will of your petitioner and without any lawful authority on the part of said Kirk so to do—that your petitioner had committed no offence against the laws of the state, nor done any thing so far as he knows to warrant his arrest. A writ of *habers corpus* had been theretofore issued to the said George W. Kirk by the Hon. Andrew Mitchell, one of the judges of the superior courts of North Carolina, commanding him, the said George W. Kirk to bring before him, the said Mitchell, the bodies of John Kerr and others then alleged to be unlawfully detained in the custody of him, the said George W. Kirk, which said writ was placed in the hands of your petitioner to be served upon the said Kirk, and your petitioner did serve the same by delivering it to the said Kirk.

The said Kirk thereupon, in the presence of your petitioner, tore up the said writ, and your petitioner left and had got some mile and a half from the village of Yanceyville, when he was overtaken and arrested by a party of said Kirk's men and carried back to Yanceyville, where he has since been detained in custody, as he has understood and believes, by the orders of the said George W. Kirk.

Your petitioner further shows that he is ignorant of any other charge gainst him than the serving of the said writ, and that he was arrested, as he is informed and believes, without any order or warrant from any magistrate or judicial officer—and that the matter of the said arrest has not been examined and adjudged upon any writ of *habeas corpus* heretofore issued, to the knowledge of your petitioner.

In consideration of the premises, may it please your honor, to grant to him a writ of *habeas corpus*, to be directed to the said George W. Kirk, commanding him to produce the body of your petitioner before your Honor, together with the cause of his arrest and detention, to the end that he may be restored to his right and liberty as a citizen of the state.

(Signed) BATTLE, MERRIMON AND BRAGG,
Atty's for Petitioners.

Mr. Manager DUNHAM also read in evidence the affidavit of George Williamson, in the words following:

STATE OF NORTH CAROLINA,
Wake County.

George Williamson being duly sworn, says: That he has no personal knowledge of the fact set forth in the foregoing petition, not having seen the petitioner in actual custody. But he has heard from one Stokes, who saw the petitioner in custody, that it was so, and that the petitioner was arrested and is detained for the reason stated in the petition. He further swears that he has been credibly informed that the facts set forth in the petition are true, and affiant has every reason to believe that they are true, and that he has reasons to believe, and does believe that the petitioner is yet held in the custody of the said George W. Kirk, having heard nothing to the contrary since he was arrested.

(Signed) GEORGE WILLIAMSON.

Sworn and subscribed before me,

(Signed) R. M. PEARSON, Ch'f J. S. C., at Raleigh.
July 24, 1870.

Mr. MERRIMON. We now, Mr. Chief Justice, offer the return in evidence.

Mr. BOYDEN. We object to the admission of the return.

Mr. GRAHAM. We submit that it is equally competent where it has been taken cognizance of by a judicial officer.

The CHIEF JUSTICE. The presiding officer thinks that it would be better first to read the writ.

Mr. GRAHAM. It would be more orderly. In the copy of the proceedings which has been furnished here the proper succession has not been preserved.

Mr. Manager DUNHAM read the writ in the words following:

STATE OF NORTH CAROLINA.

To George W. Kirk—Greeting:

We command you, That the body of John Kerr, being confined and detained in your custody, as it is said, together with the day and cause of his capture and detention, by whatever name he may be called, you have before me, Richmond M. Pearson, chief justice of the supreme court of the State aforesaid, at the chamber of the supreme court in the city of Raleigh, immediately after the receipt of this writ, to do and receive what shall be then and there considered in his behalf.

Witness, Richmond M. Pearson, Chief Justice of the Supreme Court, this the 23d day of July, A. D. 1870.

(Signed,) R. M. PEARSON,
Chief Justice Supreme Court.

Mr. Manager DUNHAM then read the order appended to the writ in the words following:

David A. Wicker, Marshal of the Supreme Court, is hereby authorized and commanded forthwith to make service of this writ on G. W. Kirk, as provided by law in such cases, and make return how he has executed the same at Raleigh.

(Signed,) R. M. PEARSON,
Chief Justice Supreme Court.

July 30, 1870.

Mr. MERRIMON. We now read the return of the officer.

Mr. BOYDEN. Mr. Chief Justice, upon reflection it strikes me that this is not the return of any officer—of any sheriff or constable—but of a private individual. We admit that if it were a precept directed to any known officer of the land, his return would be evidence, but being directed to a private individual it cannot be admitted. Who is it directed to?

Mr. MERRIMON. It is directed to the marshal of the supreme court.

Mr. BOYDEN. I suggest that even if it is directed to the marshal, it still comes within the rule, it being no part of the ordinary business of the marshal of the supreme court to serve writs of *habeas corpus*, hence the same rule will apply. If his return was made in any case pending before the supreme court as a court of record and hence within his duty, it would be evidence. But this was not before the supreme court at all. It was a proceeding before the chief justice at chambers; and therefore he is not an officer in the sense in which that word is used and his return cannot be taken or proved.

Mr. BRAGG. Mr. Chief Justice and Senators, the chief justice had a right to designate any one to execute this process, and having designated Mr. Wicker, who was at that time a marshal of the supreme court, he is *pro hæc vice* an officer to execute this process, and his return having been received and passed upon by the chief justice, it is sufficient without any further proof. The chief justice well knew his duty at that time under the law, and having designated Mr. Wicker, who was an officer of the court, that officer served the writ, and having served it, made his return, as it was his duty to do, and the chief justice having received and passed upon the return as valid, as appears, nothing further can be said.

Mr. BOYDEN. Mr. Chief Justice, the gentleman has not met my point at all. It is not denied that the chief justice had a right to appoint any man to serve the writ, but that judicial officer was not sitting as a court of record and Mr.

Wicker did not act as an officer of a court of records and therefore the return must be proven. That is the point in the case.

Mr. GRAHAM. Mr. Chief Justice, we think we understand the point and it is this, that when an officer is especially deputed and his action is recognized by the tribunal which is to act upon his return, that recognition does give it the same credit wherever the proceedings may be examined as if he had been a regularly appointed officer. The judicial magistrate who gives the deputation confers an authority for the execution of the writ, and when the return is made and is treated as a valid return by that judicial officer, where is the authority that holds that such a return is not to be treated elsewhere precisely as if it had been made by an officer appointed originally by law. In this instance the judge made the officer—constituted him as an officer for that purpose—and his action is the same as if he had been an officer whose business it was to execute such process.

The CHIEF JUSTICE. The presiding officer is of the opinion that the return made to the chief justice may be read without further proof, the chief justice having passed upon it at the time.

Mr. MERRIMON. Mr. Chief Justice, the ruling having been made we put these papers in evidence. We have read a specimen.

The CHIEF JUSTICE. You had better read the return made by the marshal who served the writ.

Mr. Manager DUNHAM read the return in the words following:

I executed the within writ by leaving a copy thereof with George W. Kirk, at the court house in Yanceyville, Caswell county, N. C., this first day of August, 1870.

(Signed) DAVID A. WICKER, Marshal.

M. MERRIMON. Mr. Chief Justice, we now offer in evidence a case which will raise the point which the deendant's counsel desire to raise.

Mr. Manager DUNHAM read the petition of Adolphus G. Moore in the words following:

STATE OF NORTH CAROLINA.

To the Honorable Richmond M. Pearson, Chief Justice of the Supreme Court:

The petition of Adolphus G. Moore, a citizen of the county of Alamance, in said state, respectfully sheweth unto your honor that on Friday morning, the 15th day of July, A. D. 1870, while he was about his daily and lawful business in said county, he was arrested and detained by a squad of persons purporting to be soldiers; that he was informed that he was arrested by the order of one George W. Kirk, claiming to exercise authority as a military officer; that he was forced by the said squad of soldiers to proceed to the headquarters of the said George W. Kirk, who informed him that he was arrested by the order of him, the said George W. Kirk, and that he acted under the order of his superior officer, but who that superior officer was he did not state; that the said George W. Kirk so seized your petitioner and holds him since in custody, and deprives him of his liberty and refuses to allow him to go at large, as he has a right to do; that he demands of the said George W. Kirk to know for what cause he was so arrested, but he refused to state any cause for such arrest and detention, and to allow petitioner his liberty; that petitioner offered to give bail in any reasonable sum of money that might be required; that he was denied such bail, and the said Kirk declared he would not take bail in the sum of one million dollars; that he has no knowledge of the cause of his said arrest, and, in fact, there is no cause for the same; that petitioner is a quiet, peaceable and law-abiding citizen, and has not committed any offence to his knowledge; that said arrest was made without any proper warrant or lawful authority to the knowledge of the petitioner; that he has made demand of the process of law, and copies of the same, authorizing such arrest, and none has been given or produced; that said arrest is illegal, because it was made without warrant of law, or

any lawful authority; that the said matter of the said arrest and detention has not been adjudged upon any prior writ of *habeas corpus* heretofore granted.

In tender consideration of the premises, your petitioner prays your honor, to grant unto him, the writ of *habeas corpus* to be directed to the said George W. Kirk, commanding him forthwith to produce your petitioner before your honor, together with any cause for such arrest and detention, to the end that your petitioner may be restored to his rights and liberty as a citizen of the state.

E. S. PARKER,
A. S. MERRIMON,
Attorneys for Petioner.

Mr. Manager DUNHAM also read in evidence the affidavit of E. S. Parker in the words following:

STATE OF NORTH CAROLINA.

E. S. Parker makes oath that he has heard read the foregoing petition, and that the same is substantially true; that he, as counsel for the said petitioner, saw the said George W. Kirk, and asked him for the authority for such arrest and detention; that the said Kirk gave his authority as stated in the foregoing petition, and affiant knows that he, the said Adolphus G. Moore, is so held and detained by the said George W. Kirk, who stated to affiant that he had no warrant or process, other than a military order for the arrest and detention aforesaid of the said Adolphus G. Moore.

E. S. PARKER.

Sworn and subscribed before me, this 16th day of July, A. D. 1870. WM. H. BAGLEY, Clerk.

Mr. Manager DUNHAM also read in evidence the order that the writ issue in the words following:

STATE OF NORTH CAROLINA.

To George W. Kirk, Greeting:

Let the writ issue as prayed for in the above petition.

R. M. PEARSON, Ch'f J. S. C.

At Chambers, 16th July, 1870.

Mr. Manager DUNHAM also read the writ issued in the case of Adolpus G. Moore in the words following:

STATE OF NORTH CAROLINA.

To George W. Kirk, Greeting:

We command you, that the body of Adolphus G. Moore, being confined and detained in your custody, as it is said, together with the day and cause of his capture and detention, by whatever name he may be called, you have before me, Richmond M. Pearson, Chief Justice of the Supreme Court of the State aforesaid, at the chamber of the supreme court in the city of Raleigh, immediately after the receipt of this writ, to do and receive what shall be then and there considered in his behalf.

Witness, Richmond M. Pearson, Chief Justice of the Supreme Court, this the 16th day of July, A. D. 1870.

RICHMOND M. PEARSON, Ch'f J. S. C.

Mr. MERRIMON. We now, Mr. Chief Justice, offer to read the affidavit of McAllister.

Mr. BOYDEN. On what ground do you offer it?

Mr. MERRIMON. On the ground that he served the process.

Mr. BOYDEN. It seems to me, Mr. Chief Justice, that that cannot be evidence in this case, unless it is proven. Mr. McAllister was not an officer. He was a private individual, and we do not know whether he served it or whether he ever made the return. This suggestion about a *quasi* record does not help the case. *Quasi* records are not records. Records prove themselves; *quasi* records do not prove anything. We cannot see how this testimony can be allowed here against this respondent without proof.

Mr. MERRIMON. Mr. Chief Justice and Senators, suppose that the chief justice had said, on the occasion of issuing this writ, as further action in that behalf had by him, "It appears "to me that the writ heretofore issued by me to George W. "Kirk has been duly delivered to him by A. C. McAllister," and that thereupon the chief justice should go on and take action, I ask the gentlemen on the other side if they could question that act. The chief justice has decided the matter and has determined in a judicial way according to law that the

particular facts exists, and according to every rule of law the cannot be questioned in this collateral way. This memori made by your honor must speak for itself. It must spe everywhere. It cannot be attacked collaterally; and if tl gentlemen desire to invalidate this proceeding they must i stitute a proceeding directly for that purpose. It stands as memorial made by a proper judicial officer and is to be read true wherever it is material it should be read whether in o court or in another court. This is not only so, sir, as it see to me, on principle, but it is so on authority. While I ha been sitting here, I have turned to the general rule as laid dow in Roscoe on criminal evidence, page 1. The language used that, "upon the principle, the records and proceedings " courts of justice existing in writing are primary evidence " the facts there recorded." It is the highest evidence; an therefore, sir, if it were needed to prove what McAllister di as to making a return, it would be only necessary to produc this paper as part and parcel of the proceeding before you honor.

But, sir, we have a decision in our own courts upon this sul ject in which it was solemnly adjudged that a return of th sort, when it is adopted and recognized by the court, is *prim facie* true. That was in the case of a special deputy sheri and the return was received by the court, which held that was *prima facie* to be taken as true because a court had r ceived it and acted upon it; but it was held in that case tha the return might be contradicted. But, sir, I go further he and say this return here was not material, I mean so far as tho records are concerned, for it must have appeared to the Chi Justice that Kirk had been served with the writ.

But, sir, it is well enough to come to the point and se exactly how this matter stands. At the time this first writ wa issued by the chief justice, neither he nor the counsel wer aware of the fact that our new act upon the subject of *habe corpus* prescribed who should serve the writs. It was su posed that the law was, as it was under the common law, th

anybody could serve the writ, and it was, therefore, that Col. McAllister, a man who was not an officer but merely a citizen of the State, was charged with these writs to deliver them to Kirk. Col. McAllister did so deliver them and made an affidavit which we now propose to have read as part and parcel of the proceedings before the chief justice. After that it turned out, on looking at the new statute, that the law provided that "the writ of *habeas corpus* may be served by any qualified "voter of the state thereto authorized by the court or judge "ordering the same." The material point was that McAllister had not been specially deputed by the chief justice to deliver this writ although he was an elector and did serve it. But the service was recognized by the chief justice and acted upon. McAllister made the affidavit which we now propose to put in evidence, and the chief justice, in his opinion, in speaking of the fact, said that "upon proof of service, and the failure "of Col. Kirk to return the writ, the counsel of the prisoner "submitted two motions." So that the chief justice, before he proceeded to deliver an opinion at all, determined that the writ had been duly served. But suppose it were material that it should have been served by some elector of the state, specially deputed, I take it that that does not exclude the common law method. The statute does not provide that the writ shall be served in that way, and in no other. It is merely directory, and I take it that the chief justice took that view, because it was not contended at the time that the service was not sufficient, and all the action that was had was based upon it.

This much, sir, upon the merits of the question which the gentleman presents by way of opposition to the affidavit. And now to get back to where we started, without reference to the merits, we contend that the chief justice having adjudged that it was duly served and have adopted it as a part and parcel of the proceedings before him, the affidavit of McAllister, it must be read as part and parcel of the proceedings and it cannot be questioned in this collatant way.

Mr. SMITH. Mr. Chief Justice, I cannot at this moment

lay my hand upon it, but my impression is that the chie justice held during the progress of these cases before him tha the writ could not be served by any but one of the lawful offi cers of the state without the previous designation of the per son by whom it was to be executed. Whether I am correc as to that point having been ruled or not, it is very clear—

The CHIEF JUSTICE. You will find it in the opinion i the case of Kerr.

Mr. SMITH. It is very clear to my mind that that is th correct ruling whether made, as I understand it, or not. A writ of *habeas corpus* is not directed to any officer whatever It is a command directed expressly by the authority issuin it to the party alleged to be illegally detained a prisoner The *habeas corpus* act expressly requires, as we understand it that the court or judge issuing the writ, if it be directed t any other than the officer, shall designate the person to serv it. Section 32 of the act of 1868 and 1869 provides that "
" writ of *habeus corpus* may be served by any quailfied electo
" of this state thereto authorized by the court or judge allow-
" ing the same."

I have now in my hand the opinion of the chief justice d livered in the case referred to.

" George Williamson was not authorized by me to mak
" service of the writs upon Col. Kirk. In the case of Moor
" and others, when the writs were signed, I asked the counsel
" 'shall I order witnesses to be summoned?' the reply was, 'we
" will attend to that matter.' I added, 'whom shall I author-
" ize to serve the writs?' and was answered, 'the sheriff of Ala-
" mance is under arrest; we will get some one to serve them,
" and make affidavit of service.' I was thinking about the old
" *habeas corpus* act, and supposed the late act had changed the
" law. Why the counsel of the petitioner did not ask to have
" some elector authorized to serve the writs, is a matter not
" known to me. Far be it from me to believe that the omis-
" sion was of purpose to bring about a collision. On the con-
" trary, I believe it was a *bona fide* inadvertence on their part

"as it was on mine, in not looking at the provisions of the new "*habeas corpus* act.

"But so it is—the matter passed, and on the application for "the writs in favor of Kerr and others, I signed the writs, and "nothing was said about the service.

"It thus has happened, that the person who served the writ "for Moore and others, and the person who attempted to serve "the writs for Kerr and others, were not authorized to do so; "and Colonel Kirk was justified in treating Williamson as an "intruder into his camp, the more aggravated because Wil-"liamson was one of the insurgents of the county of Caswell."

I read that much of the opinion of the chief justice upon the trial of these matters, because it fully establishes what we think to be the plain interpretation of the statute on that subject, that where a party goes outside of the sworn officer of the law to deliver copies of an important process issued by a judge, it is necessary that the party so acting, should be first designated and appointed by the judge to execute it. If that be so, we should object to the reading of his paper, if it were shown to have been on affidavit, or in any other form, because of the service of the process being void; and as was said by the chief justice, Col. Kirk was not required to obey it, or to permit the party to approach his camp.

But in addition to what I have said, (and it applies to all these cases,) I take it that these returns have no validity at all, except so far as they illustrate what follows. They are no evidence except against parties and privies of any fact which is stated in any one of them. They are evidence of themselves, of their existence; and whatever flows from the existence of such a paper or results from it; may be inferred by the production of the paper, but no fact can be inferred of the truth of anything contained in it, to the prejudice of any one, whatever, outside of the proceedings. But we insist further, that this, of all papers, ought to be shown to be valid when produced in evidence. Can it be possible that it is necessary, to have proof, to give validity, as evidence, to the act of

the chief justice of the state, and yet we can produce a paper executed by a subordinate officer without any proof of its genuineness at all? That you are required to show—that the papers purporting to have been signed by the chief justice, was in fact signed by him; and yet it is contended that you are not required to show that the act of some officer before him was genuine. That is the argument of the other side.

We desire also to interpose our objection to the competency of the evidence produced, so far, to be heard at all. It is is fair that we understand for what purpose the gentlemen offer the testimony beyond the proof of the existence of it, as a paper connected with the proceedings taken before the chief justice. It it is offered with the view of establishing any fact whatever which is recited in any of the proceedings, then we must object to it, in that point of view as inadmissable evidence.

Mr. GRAHAM. Mr. Chief Justice and senators, the question here is, what did the chief justice do on this occasion? His proceeding we are inquiring into. He issued a writ. McAllister comes into court with the writ, or a copy of it, and makes a return. Did the chief justice recognize that return? I suppose there is no doubt about that. If he did, it is the same thing, sir, as if he had deputed him in the beginning. I do not know that I can repeat the old maxim in Latin, but it is in English that "everything which is recognized as done, is "considered as having been ordered from the beginning." And here, sir, the judge before whom this return was made, recognized the return as having been made by a proper person, whether officer or not, and proceeded to act upon that return. No objection was taken in the proceedings to the return at the time, or if there was it is now *res adjudicata* just as much as the fact that the writ issued. That being the case, it does not matter who made the service, and it is just the same thing as if the chief justice had deputed this man from the beginning to serve this writ.

Mr. BRAGG. I desire to add a few words to what has been already said. It seems to me, Mr. Chief Justice and senators,

that this whole discussion is out of place—at least upon the part of the gentlemen on the other side—for the respondent has here expressly admitted that this writ was issued by the chief justice in the case of Moore and others and was served. He cannot be allowed to controvert the fact now. We take the ground that it is unnecessary to read this affidavit, that the chief justice has entertained jurisdiction of the whole matter and delivered his opinion in the case after notifying the governor, who appeared before him by counsel and as we expect to show, and when the attachment was asked for against Kirk, the chief justice directed a copy of this opinion to be served upon the governor, and that thereupon the governor declined to cause the prisoners to be surrendered to the civil authorities. That is the point of this whole matter. Let us see what the respondent says in his answer, for I say that he has admitted service.

"And this respondent further admits, that George W. "Kirk, Colonel commanding the said body of militia in Ala- "mance county, did, for good and sufficient cause, arrest and "detain the said Adolphus G. Moore, named in said fifth "article, and that the said arrest and detention was approv- "ed of by this respondent as governor of North Carolina. "Furthermore this respondent admits that the said Adolphus "G. Moore applied to the honorable Richmond M. Pearson, "chief justice of North Carolina, for the writ of *habeas corpus*, "to the end set forth in the fifth article, and that the said chief "justice caused the said writ to be issued and directed to the "said George W. Kirk, commanding him to produce the body "of said Moore at the time and place alleged in said fifth "article, and this respondent further admits that the said writ "was served on the said Kirk, and that the said Kirk made no "return thereto and refused to obey the same, and that this "failure on the part of said Kirk to make return to said writ "and to produce the body of the said Moore in obedience "thereto, was done by the order of this respondent as governor "of North Carolina."

Mr. BOYDEN. I do not understand how that reading helps their case. In the first place, Mr. Chief Justice, I take his objection, that they have no right to take up the time of this honorable court in proving matters that they say are admitted, and even if they have, there is no rule of law that they can prove facts in an illegal way. That is all I wish to say.

The CHIEF JUSTICE. The presiding officer is of the opinion that the paper may be read as far as it proves the service of the writ of the *habeas corpus*, but not in regard to the other matters which were added for the purpose of founding a motion against Kirk individually. That would be outside of this case. The return can be read so far as to show the service.

Mr. Manager DUNHAM read as follows:

"A. C. McAllister makes oath, that on Sunday the 17th of "July, 1870, between the hours of 10 and 11 o'clock A. M., in "the county of Alamance on the highway leading from Com-"pany Shops in said county, to Yanceyville, in the county of "Caswell, in said state, about nine miles from said Company "Shops, he delivered to George W. Kirk who was at that time"——

Mr. BOYDEN. We object to anything further. We admit that McAllister executed the writ and made the return.

Mr. MERRIMON. We desire to prove it.

The CHIEF JUSTICE. That is admitted. The presiding officer is of the opinion that it cannot be read except for that purpose and not for other matters which are irrelevant.

Mr. BRAGG. If it is admitted independent of the answer we do not wish to put the whole answer in evidence.

The CHIEF JUSTICE. That, I suppose, is your object.

Mr. MERRIMON. Do the counsel consider these papers in? They have raised the point.

Mr. BOYDEN. No, sir; we consider them in as they are introduced and admitted.

Mr. MERRIMON. The court will perceive by looking at the certified copy that this is a very long document. It contains the petitions and the writs of *habeas corpus* issued by the

chief justice, and the returns made to the writs, and the opinion of the chief justice in the several matters before him. We have offered to put the whole in evidence. The question is whether they shall be considered in evidence or whether we shall detain the senate by reading all these papers now.

The CHIEF JUSTICE. You put the whole in including the affidavit of service?

Mr. MERRIMON. Yes, sir.

The CHIEF JUSTICE. That has been withdrawn upon the admission of the service of the writs on Col. Kirk which was all that the affidavit proved, in the opinion of the presiding officer.

Mr. MERRIMON. If that is admitted, we withdraw the offer of the affidavit—if it is admitted that it was served.

The CHIEF JUSTICE. Better consider it withdrawn and put in the paper except the affidavit. That can be done with the consent of the counsel for the respondent.

Mr. BOYDEN. We insist upon its being read.

Mr. MERRIMON. Mr. Chief Justice, we insist that it is competent for the senate to admit the paper without its being read. We think it is trespassing too much upon the court to insist upon the reading of this long document.

Mr. GRAHAM. In regard to the affidavit, Mr. Chief Justice, we think that in lieu of reading it, there should be an entry of an admission of the regular service of the writ.

The CHIEF JUSTICE. Certainly. The presiding officer supposes that the counsel should make that admission to be entered in place of the affidavit. But he is of the opinion that it is the right of the respondent to have all the papers offered read. Under the constitution an accused party is to be confronted by his accuser and witnesses, and if the counsel for the respondent desire it, there is no alternative but to put in the whole.

Senator MERRIMON. Mr. Chief Justice, I understand this testimony is admitted to save time, that it is to be printed and the reading dispensed with for the present.

Senator MOORE. I object, Mr. Chief Justice, as a member

of this court, to dispensing with the reading of these pape
I have got my opinion to render as a juror on the pendin
questions, and I desire to do so intelligibly. I think ———

Senator GILMER. I submit as a question of order that l
the rules of this court, no question is debatable by senato
except by the consent of the senate.

The CHIEF JUSTICE. The gentleman from Craven
not in order unless the senate allows him to be heard. Tl
presiding officer is of the opinion that to print the whole of tl
documents as suggested by the senator from Guilford, would l
to print the same things in thirty or forty cases.

Senator GILMER. It was not I that made the suggestic
about printing, it was the senator from Buncombe [Mr. Me
rimon.]

Senator MERRIMON. I made the suggestion, Mr. Chi
Justice, to save the time of the reading these documents. W
will have the opportunity to read them when they are printe
and laid upon our desks to-morrow. I cannot see the necessit
of consuming so much time.

Senator MOORE. I rise to a question of order. The que
tion is not debatable.

Mr. BADGER. Mr. Chief Justice, it may be that there a
certain parts of these papers which are not evidence and
does seem to me that the respondent has a right to hear the
read before they are printed as a part of the evidence in tl
case, in order that he may object to such portions of them
are incompetent; and I now solemnly protest in the name
the respondent against any portion of these papers being pu
in evidence except such as shall be found to be admissible, as
violation of section 11 article I of the constitution which pr
vides that "in all criminal prosecutions every man has th
"right to be informed of the accusation against him and t
"confront the accusers and witnesses with other testimony," &

Senator MERRIMON withdrew his motion.

Senator MOORE. The motion having been withdrawn,
desire to hear the papers offered read. I think this is th

proper place. It would give us a better understanding of the issues involved if we could hear them.

The CHIEF JUSTICE. The clerk will read.

The CLERK proceeded to read the opinion of chief justice Pearson in the case of *ex parte* John Kerr and others, in the words following:

The counsel of the petitioner, on the affidavit of George Williamson, who is a qualified voter and a citizen of the county of Caswell, submitted a motion for an attachment or rule against G. W. Kirk, for not making return to the writ of *habeas corpus*, if, upon the facts set out, it be considered that the writ was duly served, or for an attachment for wilfully obstructing and preventing service, or for any other writ to which upon the facts disclosed the petitioner may be entitled.

I declare my opinion to be that there is no ground for an attachment, or for a rule to show cause, but that the petitioner is entitled to have an order, authorizing some qualified voter of the state to make proper service of the writ; for that purpose I shall designate the marshal of the supreme court.

By the *habeas corpus* act, sec. 32, it is provided, "The writ of *habeas corpus* may be served by any qualified voter of the state, thereto authorized by the court or judge ordering the same."

George Williamson was not authorized by me to make service of the writs upon Col. Kirk. In the case of Moore and others, when the writs were signed, I asked the counsel, "shall "I order witnesses to be summoned?" the reply was, "we will "attend to that matter." I added, "whom shall I authorize to serve the writs?" and was answered, "the sheriff of Alamance is under arrest; we will get some one to serve them, and make affidavit of service." I was thinking about the old *habeas corpus* act, and supposed the late act had changed the law. Why the counsel of the petitioner did not ask to have some elector authorized to serve the writs, is a matter not known to me. Far be it from me to believe that the omission was of purpose to bring about a collision. On the contrary, I believe it was a

bona fide inadvertence on their part as it was on mine, in not looking at the provisions of the new *habeas corpus* act.

But so it is—the matter passed, and on the application for the writs in favor of Kerr and others, I signed the writs, and nothing was said about the service.

It thus has happened, that the person who served the writ for Moore and others, and the person who attempted to serve the writs for Kerr and others, were not authorized to do so; and Colonel Kirk was justified in treating Williamson as an intruder into his camp, the more aggravated because Williamson was one of the insurgents of the county of Caswell. I say "insurgents," for although Mr. Battle, in his remarks in moving for an attachment against the governor, on the coming in of his reply to the proceeding had by the marshal, took occasion to say, that while he agreed generally with the conclusions in the opinion filed by me, he differed on the question, that all of the citizens of a county declared to be in a state of insurrection are to be deemed insurgents. I adhere to that opinion—they are all to be taken as being insurgents, until the insurrection is suppressed and some change in their relations is made. Indeed, I did not enter into a discussion of the question, and took the principle to be settled—on the plain ground that as long as a man remains in the county he must be taken to be an insurgent; because, in the nature of things, it is impossible to make any distinction. Who is to decide while a county is in a state of insurrection, whether this man or that man is well affected or disaffected? This inquiry can only be made after the insurrection is suppressed.

Mr. Battle put this case: The county of Guilford is declared to be in a state of insurrection,—is justice Dick to be deemed an insurgent? Certainly, unless he "comes out from among them," or his status be fixed by proceedings had after insurrection is suppressed. I am glad to find that Chief Justice Chase, in Mrs. Alexander's cotton case, takes the same view (2d Wallace, page 404.) He says, "We must be governed by the principle of public law so often announced from this bench,

as applicable alike to civil and international wars, that *all the people of each State or district in insurrection* against the United States, must be *regarded as enemies*, until by the legislature and the executive, or otherwise, that relation is thoroughly and permanently changed."

This principle goes as far back as our Anglo-Saxon ancestors. By the common law, every inhabitant of a "hundred" or township, was liable for the value of any goods stolen within its bounds, unless the thief was apprehended and brought to justice, "or hue and cry made." Hence the cry, "stop thief." Justice Dick, who is curious in such matters, informs me that the word "neighbor" is derived from two Saxon words, meaning "near, pledge;"—every man being a pledge for those who lived in the same "hundred," and all being liable, as "the rain falleth on the just as well as the unjust."

It would have been well, and saved much cost, and much danger of civil strife had the "neighbors" or citizens of the county of Caswell considered every man as a "pledge" for the good behavior of all of the other inhabitants, and seen to it, that the perpetrators of a murder, committed in the court house, on the day of a political meeting, and in the day time, were brought to justice, or a "hue and cry" made, if the murderers fled.

Col. Kirk seems to be, in some measure, justified in not permiting an insurgent, who was not authorized by me, to make service of the writs.

But I have declared my opinion to be that the writ of *habeas corpus* is not suspended, (*Ex parte* Moore,) and I feel it to be my duty to enforce the writ, or exhaust the power of the judiciary. The writ will be handed to David A. Wicker, marshal of the Supreme Court, with authority to make service in pursuance of the *habeas corpus* act.

Mr. McCORKLE. Mr. Chief Justice, it may be that we are misunderstood by the court. It is not our intention to require that all these petition, and all of the returns made thereto should be read by the learned counsel for the managers. We

have had no opportunity of looking into these papers. Our object is not to consume the time of the court, and therefore, I would suggest the propriety of suspending the further reading of them. If, upon inspection, they are all regular, of course we shall raise no objection to them at all. So far as the petitions and so far as the returns were made by the proper officers, we do not object to their being read here at all.

It may be proper, Mr. Chief Justice, to understand what was meant by the admission of the counsel for the respondent that these writs had been executed. I take it, and such is the view of my associates, that we admit only that Mr. McAliister did execute this writ. We did not mean to say thereby that it was a legal service or a legal return. We desire the gentlemen to understand us on that point.

Mr. GRAHAM. We insist that it is a legal return, and was so admitted at the time. If there be any doubt on that point, we wish the question settled at once.

Mr. MERRIMON. That is admitted in the answer.

The CHIEF JUSTICE. The presiding officer is of the opinion that the chief justice having acted upon the return as legal, it is to be taken as such, but you cannot go outside of the fact, that the writ was served. Counsel were required to reduce to writing an admission that it was served. The presiding officer would suggest that the parties look over the papers and see what they want to read and consider that as read.

Mr. GRAHAM. As I understand it the clerk has gone through with the reading.

Mr. BOYDEN. We desire this matter about the admission determined. If the court admits that this was a legal service by a proper officer, we certainly do not admit any such thing. The opinion of the chief justice in the case shows that he did not admit it as a service at all after the return was made. We have not said anything about the admission except in one case.

Mr. GRAHAM. There are several returns of McAllister and as we understand it, it was admitted they were all made in a valid manner.

Mr. BOYDEN. We desire it distinctly understood, Mr. Chief Justice, that we make no such admission. We spoke about one case before the court. We never offered to admit that they were served in a legal manner.

Mr. GRAHAM. I understand that to have been ruled by the presiding officer, and if there be no further proceedings in the matter, it is to be taken as valid service and return.

The CHIEF JUSTICE. That was the ruling of the presiding officer, that for the purpose of that writ the chief justice had acted upon it as if it was properly served, but not as to the truth of the matter set out. So, for the purposes of the writ, the chief justice held that it had been properly served, but, for the purpose of affecting Kirk, he decided that it was not properly served by Williamson.

Mr. GRAHAM. It is not Williamson's matter under consideration now. It is McAllister's case. We have no objection to letting the papers be put in evidence, and let the counsel interpose their objection hereafter.

Mr. BOYDEN. We desire it understood, Mr. Chief Justice, that they are admitted by the ruling of the court, and by no admission of ours.

Mr. GRAHAM. Do you desire us to proceed with the reading?

Mr. BOYDEN. No, sir, only let us see them to see if they are right.

Mr. MERRIMON. We are content to withdraw every affidavit of service if it is conceded that the writs were served.

Mr. BOYDEN. The court has a right to say that, but it is not our concession.

The CHIEF JUSTICE. The suggestion is that the further reading be dispensed with and that the parties look over the papers and see what part it is necessary to have included in the printed proceedings.

Mr. SMITH. Mr. Chief Justice, let us look for a moment at the manner in which this question has arisen. It will be seen at once what is the position occupied by the counsel of

respondent. The managers were about to read this return (McAllister. Objection was made by us on the ground that l was not an officer authorized to execute a writ. The chi justice held that so much of the return as related to the servi was admissible and no more. It was to so much that o concession related and to no more. We dispensed with tl reading of that affidavit so far as it was necessary to establis what the chief justice admitted it was competent to establis We are not now trying the legal results arising out of the ev dence but simply its admissibility. That is our position, an all we intended to concede. Whatever concessions are mad in the answer the gentlemen may used in the final hearing (the case.

Mr. GRAHAM. It is desirable, Mr. Chief Justice, to plac the matter in form now, or at some stage of the proceeding, s that we shall be able to know what is evidence in the cas The suggestion of the chief justice that it is quite unnecessar to print such a voluminous mass of papers as very pertinen when one or two forms would be amply sufficient. I think w might save considerable expense and time in considering th testimony by taking that course.

Mr. CHIEF JUSTICE. The counsel for the responden can put in writing what they admit to be the purport of th affidavit.

COUNSEL for the respondent submitted the following ac mission:

It is admitted by the counsel for the respondent, that th writ in the case of A. G. Moore was served by Mr. McAllste but not the legality of such service.

Mr. GRAHAM. That is a kind of protest against the de cision made by the presiding officer of this court.

Mr. CHIEF JUSTICE. The counsel proposed to make th admission before the decision.

Mr. GRAHAM. If the record shows that the court s decided, we, on behalf of the managers, are content.

Mr. BADGER. We desire, Mr. Chief Justice, on behalf o

the respondent to state that the admission in the form in which it was made may apply to each one of the returns. The admission as written applies only to the return of Adolphus G. Moore. We are willing that the same admission shall apply to all the other cases.

Mr. BRAGG. Mr. Chief Justice, it seems to me that we make but little progress, if after questions are raised and decided we are to go back and have them raised again. By this written admission certain facts were conceded, but now we find ourselves back where we were an hour ago, raising a question which has been decided by the presiding officer. How often are questions to be raised and decided again. I thought for the purpose of entertaining jurisdiction in the matter of Moore, the presiding officer had decided that he regarded that service as sufficient,—had passed upon it and recognized its validity as chief justice for the purposes of the former proceeding—not that it was abstractly proper for McAllister to serve that writ—and that as the matter stood here, we could not go back now and enquire into the validity of that service.

The CHIEF JUSTICE. The counsel seems to misunderstand the gentleman, He merely wishes that the same admission attach to each case as the one which attaches to the case of Moore and others instead of having a separate admission in every case.

Mr. BRAGG. I am not speaking of that now, Mr. Chief Justice. I am speaking of what the counsel desire to be incorporated with their admission, I desire to object to their putting it upon the record in the way they seek after it has been decided by the presiding officer that that service so far as this proceeding is concerned was valid. The chief justice having taken action upon the return of McAllister and delivered his opinion upon it, and there having been other proceedings in accordance with that opinion and a service of the opinion on the governor and a refusal by him to cause the surrender of the prisoners pursuant to that opinion, it is not now competent for the gentleman to go back and enquire whether the writ was duly

served or not. I understand the presiding officer to have de cided that point that the counsel of the respondent cannot go behind what was done.

Mr. BADGER. You will have noticed, Mr. Chief Justice, that the respondent in this case is charged in nearly all of the eight articles with having made arrests of different people, and with having refused to obey the writs of *habeas corpus* issued by the chief justice of the supreme court. We simply want it to appear on the record that though we admitted the service of the writ, we do not admit there was a proper legal service in any case.

Mr. BOYDEN. Unless there is an admission in the answer.

Mr. GRAHAM. I do not understand, Mr. Chief Justice, that any admission has been made. The paper they propose to put in is rather a protest against the decision made by this court than anything else. The record, I suppose, will state that an objection was made to the validity of the service of this writ, that the objection was overruled.

The CHIEF JUSTICE. The presiding officer is of the opinion that the counsel for the respondent have the right to have this admission attached to each case of the four or five that came up in the first instance. The first will be attached to the case of Moore and the same will be attached to each of the others—the presiding officer does not now recollect how many there were.

Mr. GRAHAM. The record will show that the objection was overruled to the extent of saying that the service was sufficient.

WILLIAM LARKIN, *the witness previously examined, being recalled on the part of the managers, testified as follows:*

By Mr. MERRIMON.

Q. I believe you stated yesterday that you were clerk of the United States district court? A. I stated I was clerk of the district court of Cape Fear district of North Carolina.

Q. Look at these papers and state what they are? (produc

ing papers to witness.) A. This is a petition of Josiah Turner, Jr., for a writ of *habeas corpus*. This next paper is the writ of *habeas corpus* issued upon such petition by Judge Brooks. This other paper is the answer of George W. Kirk to that writ.

Q. Is the order of Judge Brooks discharging Turner there also? A. I have the order of the Judge discharging Josiah Turner, Jr.

Q. How did you come in possession of those papers? A. I was acting as clerk of the Cape Fear district court at Salisbury last August, and they came into my possession at the sitting of the court when these parties were discharged.

Q. You brought them from your office? A. They have been in my possession ever since.

Q. Lodged in your office ever since? A. Yes sir.

Mr. MERRIMON. We now propose to read these papers which have been produced by the witness.

Mr. McCORKLE. Mr. Chief Justice we object to the reading of the papers for this reason. Yesterday, it appeared by the evidence that these proceedings were had at chambers. What the counsel has got to do is, to prove as was done in the cases where the writs were taken out and acted upon by the chief justice of this state, the signature of Judge Brooks. Surely in this proceeding the managers have no right to read returns that Colonel Kirk made to these writs, the service of which was made by third parties, and why? because, as it is not a court of record, the papers cannot be entertained unless the handwritings of the parties are all shown. To illustrate this proposition, under the old attachment law of North Carolina magistrates were authorized to issue attachments for certain sums, a hundred dollars, where it was based on a note or sixty dollars if it was upon an open account. Suppose that thereafter litigations should arise as to the validity of the action of the justice of the peace, I submit to the honorable managers whether under the laws of North Carolina it could be pretended that after the action of the magistrate after proving his signature to the attachment to the conditional judgment and

then to the final judgment, they could read the return of tl constable? Most clearly not. As these proceedings were n before a court of record the fact must be established in tl same way as you would establish the genuineness of the si nature of the magistrate.

Mr. BRAGG. Mr. Chief Justice and senators, I unde stand this witness to say that these papers which we propose put in evidence now were proceedings in the *habeas corp* cases heard before Judge Brooks at chambers. It will not l pretended that they were not cases heard at chambers, and course these papers are the record. And the question whether the papers are evidence upon it being shown th these were the papers upon which the judge acted. I do n understand the counsel to say that these petitions were not fil before Judge Brooks and sworn to before him. If they der that—

Mr. McCORKLE. We do not deny or admit anything abo it, we require you to prove your case.

Mr. BRAGG. Some things, Mr. Chief Justice, ought be conceded when we all know and when the papers thei selves show the facts upon their face. I admit that we have show that there were papers of this kind. We propose to sho that the petitions were sworn to before a competent officer before Judge Brooks himself. We expect to show that up these petitions writs of *habeas corpus* were issued returnat before Judge Brooks, that they purport to have been served l the marshal and were acted upon by the judge when the retu came in, and then we propose to show what was done in t cases. We admit that there is no record, strictly, because t business was done at chambers. I understand the gentlem to object to these papers on the ground that these pape have not been proven. Sir, a similar objection was made the trial of President Johnson, before the senate of the Unit States, and the matter was discussed at pages 512 to 515 of tl report of the trial. The matter was this, General Thom the adjutant general, had been appointed secretary of w

ad interim, and he had attempted to take possession of the office of Mr. Stanton, who was then the secretary of war. Mr. Stanton went before Chief Justice Cartter of the district of Columbia, and sued out a warrant against Thomas, upon an affidavit which is set forth in this volume. Judge Cartter acted upon that matter pretty much in the same manner in which Judge Brooks did. A part of the proceedings were entered by the clerk in memoranda and the recognizance taken was entered upon one of the dockets which the clerk kept—the criminal docket. The warrant and affidavit were offered in evidence. The managers objected to their admission. I will not lumber up this case by reading largely from the proceedings on the impeachment of Johnson, but only a brief extent.

"We offer a warrant of arrest of General Thomas, dated "February 22d, 1868, and the affidavit on which the warrant "issued."

Objection was taken and then by a vote of thirty four to three the evidence was admitted. Then follows the affidavit sworn to before Judge Cartter, and the warrant issued by him under which General Thomas was arrested and brought before him. On a subsequent day it being objected that there was some record of these proceedings, the clerk was directed to bring the memoranda that he had made upon some docket as was stated before the senate, and then a further objection was made that the transcript of that docket being a record was only admissable in evidence upon the principle which we all understand perfectly well that a record can only be proved by exemplification in the proper way. But the senate allowed the statement of the clerk as to the manner in which the case was tried before Judge Cartter, and then admitted the entry made by the clerk to show what disposition had been made of the matter. Subsequently Mr. Cox who had been sent for by the president and retained for the purpose of attending to this matter of General Thomas was called upon to state by the respondent's counsel what he did, the purpose being to show that he had instructions from the president to try and get this mat-

ter before the court, either by a proceeding in the nature of a *quo warranto*, or if they failed in that, by having General Thomas put in custody and then to sue out a writ of *habeas corpus*. And it was allowed by the senate after full debate to go into all these matters that took place before the judge. But that does not bear so particularly upon the matter now before the court as does the other point in relation to the admissibility of the affidavit of Mr. Staunton and the warrant that was issued. No objection was made to their admission. I suppose that they had not as astute gentlemen there as we have in this case although they do enjoy some reputation in the profession. Certainly no objection was made that the officer who served the warrant was not an officer. The whole point in controversy seemed to be—the judge having acted upon this matter, and taking it for granted that the proceedings were legally instituted before him, and the process duly served—as to its admissibility, first of the affidavit and warrant, and then of the memoranda made by the clerk; and in both instances it was ruled by an overwhelming majority that the papers were in fact a record and admissible. I call it a record though it was not. It was merely a memorial of what Judge Cartter had done on that day, and was what was done under the direction of the chief justice of this state, by the clerk of the supreme court, in the *habeas corpus* cases which are referred to here. I cannot see any valid objection to the admission of this paper.

Mr. SMITH. Mr. Chief Justice, I shall make no reply to the suggestion of the learned counsel as to the extraordinary astuteness of the gentlemen who may be engaged in conducting the case for the respondent. It is enough for us to say that we desire to secure for the respondent a fair and impartial trial, and our sole object is and will be to see that such evidence as by the laws of this state is admissible, shall be admitted and none other with our consent.

I desire to call the attention of the chief justice and the senate to the misconception upon which the gentleman has introduced a reference to the decision made in the trial of An-

drew Johnson. In that case there had already been introduced evidence by the managers to which that warrant related, and this evidence was offered in further explanation of those facts. I read from page 510.

"Mr. EVARTS. Mr. Chief Justice and Senators, the arrest "of General Thomas was brought into testimony by the mana-"gers and they argued, I believe, in their opening, before they "had proved it, that that was what prevented General Thomas "from using force to take possession of the war office. We now "propose to show what that arrest was in form and substance by "the authentic documents of it, which are the warrant and the "affidavit on which it was based. The affidavit, of course, "does not prove the fact stated in it, but the proof of the affi-"vit shows the fact upon which, as a judicial foundation, the "warrant proceeded. We then propose to follow the opening "thus laid of this proceeding, by showing how it took place, "and how efforts were made on behalf of General Thomas by "*habeas corpus* to raise the question for the determination of "the supreme court of North Carolina in regard to this act.

"Mr. Manager BAKER. I understand, Mr. President, that "if this affidavit goes in at all, it is then evidence of all that it "states, if the gentlemen have a right to put it in.

"Mr. EVARTS. I said otherwise; but you can have your "own conclusion. We do not admit it to be so."

A reference to the examination of the witness will show that these papers had on them the seal of the court. I read from page 508.

"Mr. STANBERY.

"Q. Have you with you the affidavit and warrant under "which Lorenzo Thomas was arrested? A. I have (producing "some papers.)

"Q. Are these the original papers? A. The original "papers.

"Q. Did you affix the seal of the court to the warrant? A. "I did.

"Q. On what day? A. On the 22d of Feb. last, &c."

Now the question that was raised there was not as to t proof of these being the original papers which had been fered in evidence but as to the evidence itself supposing t proof to be full and ample that they were the original pape The objection was still taken as to their admissibility,

Mr. BRAGG. We understand that question to have be decided yesterday.

Mr. SMITH. I am stating this to illustrate what I sai moment ago. Our objection is that we have not here a legal evidence that these are the original papers that were bef Judge Brooks. We say that we are entitled to evidence of t genuinenness of these papers in the ordinary way in which t genuinenness of the papers is proved. Our objection touc that point and not the effect of the evidence. In other wo we object to the manner in which this testimony is proposed go before the court, rather than to the testimony itself, if pr erly introduced.

Mr. GRAHAM. Mr. Chief Justice, the question is in wl manner the proceedings before Judge Brooks of the distr court of the United States shall be verified. It is propos here to be done by producing the papers and to prove by t custodian of those papers as we have proved that he v the person who was with the judge at the proceedings and tl the judicial action of the judge was recorded by him unc the judge's direction.

The CHIEF JUSTICE. Do you propose to prove t handwriting of the judge.

Mr. GRAHAM. We do not propose to do that. I do r know that the handwriting of the judge will appear at the e of the proceedings. It appears that the judge issued a w and we propose to prove that the judge required the clerk attend him as an amanuensis to record his proceedings, a that the papers which he has were before the judge, that t returns were made to the judge, that the judge acted upon the and that his action was recorded by the witness under t judge's direction.

The CHIEF JUSTICE. The presiding officer supposes that you can prove that the judge adopted the witnesses, writing as his own, it being not a matter of record of proceedings at chambers.

Mr. MERRIMON. We will examine the witness upon that point.

WILLIAM LARKIN, (*examination resumed.*)

By Mr. MERRIMON.

Q. State whether you attended Judge Brooks, and if so what you did? A. I attended at the session of the court for the hearing of these cases at Salisbury, and was directed by Judge Brooks to make such record as was necessary on that occasion.

Q. Have you that record here now? A. Yes sir, I have it here present.

Mr. MERRIMON. Mr. Chief Justice, we can prove the judge's hand-writing as to the issuing of the writ but we do not deem it necessary. We offer to read the papers as identified by this witness.

The CHIEF JUSTICE. It is the opinion of the presiding officer that the papers can be read.

The CLERK proceeded to read the petition of Josiah Turner, in the words following:

UNITED STATES OF AMERICA,
District of North Carolina.

To the Hon. George W. Brooks, Judge of the District Court in and for the District of North Carolina:

The petition of Josiah Turner, Jr., respectfully shows to your honor that he is a citizen of the county of Orange in the State of North Carolina, and that on the 5th day of August, 1870, while engaged in and about his lawful business, at or near Hillsboro', in said county, he was suddenly arrested by a file of armed men under the command of one Honneycut, and was placed upon the cars of the North Carolina rail road and taken to a place called Company's Shops, and was from thence sent to Yanceyville, in the county of Caswell, where he was

placed and is now confined, in the court house in said town, and is now there detained and guarded, among many others, by a body of armed men under the command of one George W. Kirk; and that his said capture and detention and restraint of his liberty are in violation of the constitution and law of the United States. Your petitioner further shows that so far as he knows, has been informed or believes his said caption and detention was without any warrant or authority but he has been informed and believes that the said George W. Kirk professes to detain him as he does in close custody under the orders of William W. Holden, Governor of the state of North Carolina;

Wherefore, your petitioner prays that a writ of *habeas corpus* from your honor, may issue to be directed to the said George W. Kirk and whomsoever may hold your petitioner in custody, commanding him or them to have the body of your petitioner before your honor immediately or at such other time as in the said writ may be specified for the purpose of enquiring into the cause of his caption and detention and to do and abide such order as your honor may make in the premises, and your petitioner will ever pray, &c.

MOORE, BATTLE, GRAHAM,
BRAGG, AND MERRIMON,
Att'ys for Petitioner.

The CLERK next read the affidavit of J. H. Moore in the words following:

STATE OF NORTH CAROLINA,
Wake County.

James H. Moore makes oath that he has heard read the foregoing petition and knows the contents thereof—that he has no personal knowledge of the arrest and detention of the petitioner as therein stated but from reliable information received in this place from persons who had personal knowledge of the fact of the petitioner's arrest and detention he verily believes that the facts touching the same are truly set forth in this petition.

JAMES H. MOORE.

Sworn to and subscribed before me this 6th day of August, 1870.

G. W. BROOKS, Dis't Judge.

The CLERK next read the writ of Judge Brooks in the words following:

The President of the United States of America to George W. Kirk or such person as may have the person herein named:

We command you, that the body of Josiah Turner, Junior, being confined and detained in your custody, as it is said, together with the day and cause of his capture and detention, by whatever name he may be called, you have before me, Geo. W. Brooks, Judge of the District Court of the United States for the District of North Carolina, at the court house in Salisbury in the county of Rowan, in the state of North Carolina, forthwith after the receipt of this writ, to do and receive what shall be then and there considered in his behalf.

Witness, George W. Brooks, Judge of the District Court of the United States for the District of North Carolina, this the sixth day of August, A. D. 1870.

G. W. BROOKS, U. S. Dis't Judge.

The CLERK next read the return of Geo. W. Kirk in the words following:

To the Hon. G. W. Brooks, Judge of the District Court of the United States for the District of North Carolina.

For return to the foregoing writ of *habeas corpus*, I state that after the counties of Caswell and Alamance were, by the proclamation of his Excellency Governor W. W. Holden, declared to be in a state of insurrection. Lt. Col. Burgen, of the second regiment of detailed militia of the state of North Carolina, was ordered to arrest Josiah Turner, Jr., for alleged violations of law, and that the said Josiah Turner was arrested by Lt. Col. Burgen, of the second regiment as aforesaid, and is now detained by me on the charge of conspiring with divers other citizens of the state to overthrow the government of the State of North Carolina.

Salisbury, Aug. 18th, 1870.

GEO. W. KIRK.

Sworn to and subscribed Aug. 1870.

Mr. BOYDEN. That is sworn to before whom?

The CLERK. There is no signature.

Mr. BOYDEN. Does the court rule that in?

The CHIEF JUSTICE. The presiding officer had rule it was admissible under the supposition that it was sworn to.

The CLERK next read the minute made by the clerk of th court.

Mr. BOYDEN. Is that signed by the judge?

Mr. MERRIMON. No, sir.

Mr. BOYDEN. We wish to be understood as objecting the paper unless signed by the judge.

WILLIAM LARKIN, [*examination resumed.*]

By Mr. MERRIMON.

Q. Did you make the entry which has been read under tl direction of the judge? A. I made the entry which wa read to his honor and corrected by him.

Q. You were directed by him to make it? A. Yes, sir the words "of the prisoner" were inserted there by hi direction.

The CLERK then read from the record the words following

United States District Court for the Cape Fear District o North Carolina, before his Honor George W. Brooks.

In the matter of Josiah Turner, Jr., } at Salisbury, Aug. 19, 1870.

No cause being shown for the caption and detention of th prisoner, it is ordered by his honor that he be discharged an allowed to go without day and that George W. Kirk pay th cost of these proceedings to be taxed by the clerk of this cour

Witness Cross Examined.

By Mr. BOYDEN.

Q. Does it appear that any time was asked? A. There is date to it, Friday, the 19th of August.

Q. Does it appear upon the entry that time was asked for b Kirk to produce witness? A. It does not.

Re-Direct examination.

By Mr. MERRIMON.

Q. Look at the papers in your hand and state what they are? A. I have the petition of John Kerr and others and an affidavit thereto, signed by Thomas Bragg; also the writ of *habeas corpus* issued upon the petition by Judge Brooks, with the return, &c.

Q. How did they come into your possession? A. They came into my possession on the same occasion at Salisbury.

Q. What time? A. On Friday, August 19th.

Mr. MERRIMON. We propose now to read the papers in the case of John Kerr.

Mr. McCORKLE. We do not require you to read them.

Mr. MERRIMON. We ask that the clerk of the court leave a certified copy of them instead of leaving the originals.

The CHIEF JUSTICE. Leave will be granted unless objected to.

The witness produced a certified copy which he left with the clerk.

Senator GRAHAM, of Orange. Mr. Chief Justice, I move that the sitting of the court be extended to half past three o'clock, unless the managers shall have finshed the testimony they desire to introduce to-day before that time, on which I call the yeas and nays, and I hope the motion will be seconded.

A sufficient number seconding the call, the yeas and nays were ordered.

The CLERK proceeded to call the roll of senators on the motion of Mr. Graham, and it was decided in the affirmative.

Those who voted in the affirmative, are:

Messrs. Adams, Albright, Barnett, Battle, Beasly, Brogden, Brown, Cook, Council, Cowles, Crowell, Dargan, Edwards, Flemming, Flythe, Gilmer, Graham, of Alamance, Graham, of Orange, Hawkins, Hyman, King, Latham; Ledbetter, Lehman, Linney, Love, Mauney, McClammy, McCotter, Merrimon, Morehead, Murphy, Olds, Robbins, of Davidson, Robbins, of

Rowan, Skinner, Speed, Troy, Waddell, Warren, Whiteside, Worth—42.

Those who voted in the negative, are:

Messrs. Bellamy, Edwards, Moore, Norment, Price—5.

Mr. McCORKLE. I desire to ask the witness a question.

WILLIAM LARKIN—*re-cross examination*,

By Mr. McCORKLE.

Q. I ask whether your memorandum shows that in the proceedings before Judge Brooks, time was asked on the part of Colonel Kirk to produce evidence as to the guilt of the petitioners?

Mr. GRAHAM. We object to the question on the ground that that matter has been ended. The question was upon the admissibility of this paper, as the memorial of the proceedings made under the direction of the judge. That question was objected to, debated, and settled and I do not see that the question asked has any relevancy after that.

Mr. McCORKLE. The gentleman misapprehends the object of my cross examination. The witness informs me that he kept this memorandum of the proceedings, and I propose to ask him whether certain other things did not take place before Judge Brooks, and if so, whether he made any memoranda of them or not. As it was not a court of record before which the proceedings were heard, I think clearly we have a right to go into the matter. We propose to ask the witness whether if, on this examination, the defendant Kirk did not ask the district judge for time to produce evidence to sustain the truth of his return. That is all we desire. It certainly is competent. If the minute were made in a court of record, then it could not be contradicted, because the record imports absolute verity itself. Surely the proceedings which took place before a magistrate or a judge at chambers are competent to be proven, and Col. Kirk certainly would not be bound by mere memoranda taken by a clerk, but would have a right to show that upon any subsequent proceedings or trial what really did take place. And if

Col. Kirk would have that right, how much greater would be the right of the respondent to come into court and show it.

Mr. GRAHAM. As we understand it, Mr. Chief Justice, this is a proposition to prove that a motion was made for a continuance upon certain reasons stated, and to amend the memorial which the judge left of his proceedings by putting in the matter which is sought to be proven. I say that this memorial is conclusive as to what action was taken on that occasion. It any other motion were made which was not set down, it was the fault of those conducting the proceedings that they did not think proper to have anything else recorded. If you are to go outside of the record which the judge has left—I speak of it as a record, but not in its technical sense—outside of the memorial which the judge has left of these proceedings, there is no end to the introduction of parole proof for the purpose of determining what is the legal effect of proceedings.

Mr. BADGER. Mr. Chief Justice, I am a little surprised to hear the learned counsel object to this evidence on the ground that those who conducted the proceedings did not have facts recorded in a court, which was no court of record in memoranda over which they had no control. The counsel must know that Colonel Kirk and his counsel had no control over the memoranda which Judge Brooks had made of the proceedings which took place before that officer. Governor Holden certainly, who is the party now on trial, had no such control. To speak of these memoranda kept by the clerk as a record is not speaking of a record in such a sense as is known among lawyers.

Mr. MERRIMON. We waive our objection.

WILLIAM LARKIN. *Cross examination resumed,*

By Mr. McCorkle.

Q. I ask if Colonel Kirk did not request the court to give him time to produce witnesses to sustain the truth of his return in all the cases except probably that of Josiah Turner? A. I think that on Thursday afternoon the counsel did ask for an extension of time for reasons which I do not now remember, but I think it related particularly to making their returns. I do not remember that it referred to the production of witnesses.

Q. I ask whether the counsel did not expressly request time to get witnesses to prove the truth of Colonel Kirk's return? A. I do not remember that witnesses were specially named. I remember that great stress was put upon the fact that it would b almost impossible to have the return prepared the next day.

Q. I ask if time was not asked the first day until the next day following to make the return? A. Time was asked until the next day.

Q. I ask you if you don't remember that when the case was called Colonel Kirk's counsel did not ask in each case that they might be allowed time to produce witnesses to prove the truth of the return? A. My recollection is not very clear, but it may have been so.

Q. I ask you to refresh your recollection, and to state if Judge Brooks did not announce that we had taken all the time allowed by law and he would not give us any time to enable Colonel Kirk to get witnesses. A. I remember that he objected on that ground to extending the time.

Q. He had already extended the time to make the return, has he not? A. No further than the next day.

Q. Did not he refuse to give us further time to get witnesses? A. Do you mean on Friday?

Q. Yes, sir, when the case was called up:

Mr. BOYDEN. The case of Josiah Turner? A. I don't remember very distinctly that it was asked for.

The CHIEF JUSTICE. I don't see that this testimony has any relevancy.

Mr. McCORKLE. This paper which they have read is not a perfect transcript. It simply says that there being no evidence against A. B. and C. D. the petitioners are discharged. We desire to show that there were some grounds for their detention and that Colonel Kirk asked for time to enable him to get witnesses to prove the truth of his return.

Mr. MERRIMON. There were fifty things said in that proceeding which they did not ask to have noted.

Q. You say you do not remember whether that motion was

made or not? A. There were several appeals made by counsel for time. I did not pay very much attention to everything that was said by them.

Q. Do not you recollect now, that the first cause called up was that of Mr. Turner, by Governor Graham? A. I am not sure that it was the first, I don't recollect.

By Mr. MERRIMON.

Q. You put down in the minutes what the judge told you to put down? A. I made the order as directed.

Mr. MERRIMON. We now put in evidence the certified copy of a telegram from the accused to the President of the United States, in reference to the action of Judge Brooks.

The CLERK proceeded to read the telegram in words following:

STATE OF NORTH-CAROLINA,
Executive Department,
Raleigh, August 7th, 1870.

To the President of the United States:

SIR: The chief justice of the supreme court of this state, sustained by his associate justices, has decided that I have a right to declare counties in a state of insurrection, and to arrest and hold all suspected persons in such counties. This I have done.

But the district judge, Brooks, relying on the fourteenth amendment and the act of congress of 1867, page 385, chapter 28, has issued a writ of *habeas corpus*, commanding the officer Kirk to produce before him the bodies of certain prisoners detained by my order.

I deny his right thus to interfere with the local laws in murder cases. I hold these persons under our state laws, and under the decision of our supreme court judges who have jurisdiction of the whole matter, and it is not known to Judge Brooks in what manner or by what tribunal the prisoners will be examined and tried.

The officer will be directed to reply to the writ that he holds

the prisoners under my order, and that he refuses to obe
writ. If the marshal shall then call on the *posse commi*
there may be conflict, but if he should call first on the fe
troops it will be for you to say whether the troops shall be
to take prisoners out of my hands.

It is my purpose to detain the prisoners, unless the arm
the United States under your orders, shall demand them.

An early answer is respectfully requested.

W. W. HOLDEN, Governor.

True copy:

[SEAL.] J. B. NEATHERY, Private Secretary.

Mr. MERRIMON. We next put in evidence the rep
the secretary of war to the telegram just read.

The CLERK read the letter as follows:

WASHINGTON, 187

Gov. W. W. HOLDEN:

In connection with your telegram, August 7th, to the
dent, the attorney-general submitted the following:

ATTORNEY GENERAL'S OFFICE,
Washington, August 8, 187

I do not see how the United States district judge can r
to issue the writ if the petition makes out a case for it u
the *habeas corpus* act of 1867, 14 statutes, 385. If the re
uncontroverted, or the facts appearing on proof to the j
after a denial by the petitioner show the arrest to have
made under lawful state authorities, he will remand the
oners. In determining whether the laws of the state auth
the first, he will respect the decision of the state judg
advise that the state authorities yield to the United S
judiciary.

(Signed,) A. F. AKERMAN, Att'y Gener

The President directs me to communicate to you the
going opinion of the atterney general.

WM. W. BELKNAP, Secretary of W

True copy:

[Seal.] J. B. NEATHERY, Private Secretary.

Mr. MERRIMON. We offer in evidence a certified copy of the letter from the accused to Judge Bond, United States circuit judge.

The CLERK proceeded to read the paper in the words following:

STATE OF NORTH CAROLINA,
Executive Department,
Raleigh Aug. 29, 1870.

Hon. H. L. Bond, judge circuit court of the United States:

SIR: Capt. Wenner, the bearer hereof, will lay before you the papers in the *habeas corpus* case of Lt. Col. Burgen, of the 2d regiment North Carolina militia.

The petition of Col. Burgen for relief does not overstate the facts as to the existence and atrocious character of the ku klux klan, in this state. It was to disperse this klan so that the civil law could not be enforced in certain localities, that the militia was called out. Col. Burgen was employed in the militia, and is now in prison for offences alleged to have been committed by him.

I shall not venture to intimate to your honor any opinion as to the law in this case, but I would be much gratified if your honor could spare the time to come to Raleigh, and try the case here. I would respectfully suggest that your honor, by being here, could obtain a clear view of that state of feeling and the surrounding circumstances, whatever your opinion as to the law in the case may be.

With great respect,
Your ob't. servant,
W. W. HOLDEN, Governor.

True copy:

[Seal.] J. B. NEATHERY, Private Secretary.

Mr. BOYDEN. I think that the clerk read the letter wrong. The word "not" is inconsistent with the language of the letter, will the clerk read it again.

The CLERK read the following:

"It was to disperse this klan so that the civil law could not

be enforced in certain localities, that the militia was called out."

Mr. BOYDEN. It is evidently a mistake.

The original letter book was produced and handed to the counsel for the respondent.

Mr. MERRIMON. We now offer in evidence, a transcript of the records of the proceedings in the superior court of Iredell county:

IN THE SUPERIOR COURT, IREDELL COUNTY,

Richard M. Allison, on behalf of himself and the other property holders and tax-payers of the state, plaintiff, against David A. Jenkins, treasurer of the state, and A. D. Jenkins, paymaster of the state troops and assistant treasurer, defendants.

The plaintiff complaining of the defendant, alleges—

I. That he is a citizen of said county, and as such is one of the tax-payers and property holders in the state of North Carolina, and has property on account of which he is bound by the laws of said state to pay taxes for its support and to carry on such business and enterprises as it may lawfully engage in, and as such tax-payer he is interested in all questions in respect to the increase of its debts in the use, disposition, and disbursement, and administration of its funds in hand.

II. That the property holders and tax-payers in said state and liable like himself to pay taxes, are many thousands in number, so that it is impracticable for them to join in this suit, wherefore he brings the same in his own name to protect not only his own rights and interest, but the same of all persons interested in like manner with himself.

III. That William W. Holden is governor of the state of North Carolina, and plaintiff is informed and believes, and so avers the facts to be that under color of his said office, and in prostitution of the same he has assumed to himself the power to issue his order to sundry persons, and by and through them to *recruit*, organize, drill, arm and equip an army of men, consisting of a thousand men and more, and has so recruited, organized, drilled, armed and equipped such army for the unlawful purpose

of arresting and depriving of their liberty the free citizens of said state without any warrant or lawful authority, and by no authority save only his own order, that in pursuance of such purpose he has arrested and deprived of their liberty many of the people and unoffending citizens of said state, and detained them in custody of said army for many days and still so detains and deprives them of their liberty, that he so arrested, detained and detains them without any lawful warrant or authority and by his own order merely, that he has so arrested and deprived said citizens of their liberty not only without any legal sanction, but in defiance and subversion of the constitution and laws of said state and the United States.

IV. That the army so recruited, organized, drilled, armed, equipped and used do not purport to be the militia or of the militia of said state, nor are they such, but they are called by said Holden "state troops," and are a recruited body of men in pursuance of orders issued by said William W. Holden to one George W. Kirk, a citizen of the state of Tennessee, and perhaps other persons; that said George W. Kirk and one Bergen and one Yates, and at least a part of the men so recruited are not citizens of the state of North Carolina, but are citizens of the state of Tennessee; that the said state troops and army were so recruited and without reference to any statute or lawful authority of said state of North Carolina; that they were selected and designated by no rule or authority of law, but to answer the lawless purpose bred in men by said Holden.

V. That plaintiff is advised and believes that said William W. Holden as aforesaid issued his said orders and in manner and by and through the means aforesaid recruited, organized, drilled, armed, equipped, transported and used the "state troops" and army aforesaid without any lawful authority but in violation of the constitution and the laws of the state of North Carolina and the United States.

VI. That the said William W. Holden under color of and in prostitution of his office of governor as aforesaid has made

his warrant and order upon the defendant as treasurer of said state for large sums of money, to-wit fifty thousand dollars and more belonging to and in the treasury of said state, to be used for the purpose of so recruiting, organizing, arming, equipping, transporting, paying and using said "state troops" and army; that the defendant as treasurer has recognized such and said warrant and orders for such sum of money from time to time and paid the same out of the money in the treasury of the state, and said Holden has used the said money for the purposes aforesaid.

VII. That said William W. Holden persists in keeping said "state troops" and army in operation for the purposes aforesaid and is about to make his further warrant and order for large sums of money, for the purposes aforesaid on said defendants; and said defendant is about to recognize the same and pay such sums of money out of said treasury as may be so required of him for the purposes aforesaid.

VIII. That the plaintiff is advised that the legislature of said state has made no appropriation of any money for the purposes aforesaid, and that there is no statute or lawful authority authorizing such use of the money so in the treasury of said state.

IX. That the plaintiff as a property holder and tax payer in said state is interested in having the said defendants restrained by injunction from so recognizing such warrant and orders for the money in the treasury and paying the same.

The plaintiff therefore demands judgement—

I. That the said defandant as such treasurer be enjoined from recognizing any and all warrants, and orders of said William W. Holden, or any other person for money in the treasury for the purpose or purposes aforesaid, or for the purpose of paying or transporting such "state troops" and army.

II. That the plaintiff is also informed and believes that one A. D. Jenkins, the assistant clerk of the treasurer, and acting as paymaster for said "state troops," has already drawn large sums of money from the treasurer of the state, and now holds the same, to wit: about sixty thousand dollars, ready to pay

over to the said troops; and plaintiff prays that he also be enjoined from paying out any money in his hands held for such purpose upon the warrant or order or demand of any person whatever.

III. That the plaintiff recover his costs in this behalf.

BRAGG, BATTLE, GRAHAM, A. S. MERRIMON,
Atty's for Plaintiff.

STATE OF NORTH CAROLINA,
Iredell County.

R. M. Allison makes oath that he has read the foregoing complaint and that the same is true so far as it purports to be of his own knowledge and as to all other matters and facts therein stated he believes it to be true.

R. M. ALLISON.

Sworn and subscribed before me, the 24th day of August, A. D. 1870.

A. MITCHELL, Judge.

SUPERIOR COURT, IREDELL COUNTY.

Richard M. Allison and all the property holders and tax-payers of the state of North Carolina, plaintiff,
against
David A. Jenkins, treasurer, and A. D. Jenkins, defendants.

Whereas, the plaintiff is about to apply for an injunction restraining the above named David A. Jenkins, treasurer, and A. D. Jenkins, from paying any further sums of under the warrant and order of William W. Holden, governor, &c., or any other person for the purpose of using, paying, organizing, equipping or arming an body of men raised by said Holden and by him called state troops, &c.

Now therefore, we, Richard M. Allison and Hugh Reynolds' Thomas H. Allison, C. A. Carlton, undertake in the sum of five thousand dollars to pay to the said David A. Jenkins and A. D. Jenkins such damages as they may sustain by reason o such injunction if the court shall finally decide that the plaint

tiff is not entitled thereto, the damages to be ascertained reference or otherwise, as the court may direct.

R. M. ALLISON,
THOS. A. ALLISO
H. REYNOLDS,
C. A. CARLTON.

STATE OF NORTH CAROLINA. } At Chambers, Aug. 24, 1
Iredell County. }

Upon the plaintiff entering into an undertaking in the of five thousand dollars, with approved security, payable t defendants, the clerk of Iredell superior court will issue junctions as demanded in the complaint, restraining Davi Jenkins, treasurer of the state, from recognizing any an warrants and from paying the same, issued by William Holden, governor of the state, for the purpose of paying the recruiting, transporting, drilling, supplying, clothing, ing and paying the troops mentioned in plaintiff's comp and commanded by George W. Kirk, one Bergen, one Y and that A. D. Jenkins, paymaster of William W. Holde enjoined from any way disbursing the sum of sixty thou dollars and all other sums of money received by him o governor's warrant, from D. A. Jenkins, treasurer, or the governor, for the purpose of defraying the expenses cruiting, transporting, provisioning, arming, and for the s ces of the troops herein mentioned and described, and th junction will be continued in force until the further ord the court.

A. MITCHELL, Judge
10th Judicial Distri

IREDELL COUNTY, IN THE SUPERIOR COU

R. M. Allison and all the property holders of the sta North Carolina, plaintiff summons for relief,

Against

David A. Jenkins, treasurer of the state of North Car and A. D. Jenkins, defendants.

STATE OF NORTH CAROLINA.

To the Sheriff of Wake county, greeting:

You are hereby commanded to summon David A. Jenkins and A. D. Jenkins, the defendants above named, if they be found within your county to be and appear before the judge of our superior court to be held for the county of Iredell at the court house in Statesville on the 2d Monday after the 3d Monday of March, 1871, and answer the complaint which will be deposited in the office of the clerk of the superior court for said county within the three first days of the term, and let the said defendants take notice that if they fail to answer the said complaint within that time the plaintiff will apply to the court for the relief demanded in the complaint.

Herein fail not and of this summons make due return. Given under my hand and seal of said court, this 24th day of August, 1870.

C. L. SUMMERS,
Clerk Superior Court Iredell county.

On the back of the aforesaid is the following endorsement, to-wit:

Received August 25th, 1870.

Served August 25th, 1870.

By leaving a copy of this summons, and copy of the order of injunction with D. A. Jenkins, public treasurer.

T. F. LEE,
Sheriff of Wake County.

R. M. Allison and all the property holders of the State of North Carolina, plaintiffs,

Against

David A. Jenkins, treasurer of the state, and A. D. Jenkins paymaster of the state troops and assistant treasurer, defendants.

To the Sheriff of Wake county, greeting:

In pursuance of the foregoing order of A. Mitchell, judge of the 10th judicial district, 24th August, 1870. at chambers, filed in the office of the clerk superior court in this case,

You are hereby commanded to notify the defendants, David

A. Jenkins, treasurer of the state, and A. D. Jenkins, payn ter of the troops and assistant treasurer, to desist and ce from recognizing any and warrants and from paying the sa issued by Wm. W. Holden, governor of the state, for purp of paying or the recruiting, transporting, drilling, supplyi clothing, arming and paying the troops mentioned in plainti complaint and commanded by George W. Kirk, one Bur

and one Yates, and that A. D. Jenkins, paymaster of Wm. Holden, be enjoined from any way disbursing the sum of si dollars and all other sums of money secured by him on governor's warrrant from D. A. Jenkins or from the gover for the purpose of defraying the expenses of recruiting, tra porting provisioning, arming and for the services of the tro herein mentioned.

Witness. C. L. Summers of our said court, at office in Sta ville, the 2nd Monday after the 3d Monday in March, 1870.

Issued 24 August, 1870.

C. L. SUMMERS, C. S. C.

IREDELL COUNTY, IN THE SUPERIOR COURT.

Richard M. Allison and all the property holders and tax payers of the state of North Carolina, plaintiffs, Against, David A. Jenkins, Treasurer of the state of North Carolina, and A. D. Jenkins, defendants.	Summons for reli

STATE OF NORTH CAROLINA,

To the Sheriff of Wake county, greeting:

You are hereby commanded to summon David A. Jenki treasurer, and A. D. Jenkins, the defendants above named they be found within your county, to be and appear before judge of our superior court to be held for the county of Ire at the court house in Statesville, on the 2nd Monday after 5th Monday of March, 1871, and answer the complaint wh will be deposited in the office of the clerk of the superior co for said county within the three first days of the term, and

the said defendants take notice that if they fail to answer the said complaint within that time, the plaintiff will apply to the court for the relief demanded in the complaint.

Herein fail not and of this summons make due return.

Given under my hand and seal of said court 24th day of August, 1870.

C. L. SUMMERS,
Clerk superior court, Iredell county.

On the back of the aforesaid summons is the following indorsements to wit:

Received August 25th, 1870.

Served August 25th, 1870, by leaving a copy of this summons and a copy of the order of injunction with A. D. Jenkins.

T. F. LEE, Sheriff.
By J. J. NOWELL.

R. M. Allison, against David A. Jenkins, treasurer of the and A. D. Jenkins, Paymaster of State Troops and Assistant Treasurer, Defendants.

To the Sheriff of Wake county, greeting:

In pursuance of the foregoing order of A. Mitchell, judge of the 10th judicial district, 24th August, 1870, at chambers, filed in the office of the clerk of the superior court in this case, you are hereby commanded to notify the defendants, David A. Jenkins, treasurer of the state, and A. D. Jenkins, paymaster of the state troops and assistant treasurer, to desist and cease from recognizing all warrants and paying the same issued by William W. Holden, governor of the state, for the purpose of or the recruiting, transporting, drilling, supplying, clothing, arming, paying the troops mentioned in the plaintiff's complaint and commanded by George W. Kirk, one Burgen and one Yates, and that A. D. Jenkins, paymaster of William W. Holden, be enjoined from any way disbursing the sum of sixty thousand dollars, and all other sums of money received by him on the governor's warrant for the purpose of defraying the expenses of recruiting, transporting, provisioning, arming and for the services of the troops herein mentioned.

Witness, C. L. Summers, clerk of our said court, at office in

Statesville, the 2d Monday after the 3d Monday in March, A. D. 1870.

C. L. SUMMERS, C. S. C.

Issued 24th August, 1870.

SUPERIOR COURT, IREDELL COUNTY.

R. M. Allison for himself and the other property holders and tax payers of the state of North Carolina, plaintiff, Against D. A. Jenkins, treasurer, and A. D. Jenkins, defendants.	Undertaken on apppeal.

Whereas, on the 24th day of August instant, 1870, the plaintiff obtained from his honor Judge Mitchell, at chambers in the superior court of Iredell county, enjoining the defendants from paying certain money to certain persons and on certain accounts, as therein specified, and whereas, the defendants intend to appeal therefrom to the supreme court.

Now, therefore, we A. D. Jenkins, of Raleigh, and C. Dewey and J. C. Blake, undertake in the sum of five hundred dollars, that the said defendants shall pay all costs and damages that may be awarded against them on such appeal.

A. D. JENKINS,
D. A. JENKINS,
D. DEWEY,
JOHN C. BLAKE.

Copy served on R. M. Allison this 6th day of September, 1870.

STATE OF NORTH CAROLINA, }
Iredell County. }

Be it remembered that a superior court of law was opened and held for the county of Iredell, at the court house in Statesville, on the 2d Monday after the 3d Monday in August, A. D. 1870, the honorable Anderson Mitchell judge of said court present and presiding.

The following recorded appears, to wit:

R. M. Allison and others Against D. A. Jenkins and A. D. Jenkins.	Iredell Superior Court.

The plaintiff, R. M. Allison, maketh oath and saith that he is informed and believes that the said A. D. Jenkins, since the service upon him of the injunction issued by the court, in this case and in disregard and defiance thereof, has turned over or disposed of the funds in his hands, as set forth in the complaint for the benefit of troops mentioned therein.

R. M. ALLISON.

Sworn to and subscribed before me, this 6th day of September, 1870.

C. L. SUMMERS, C. S. C.

R. M. Alfison, plaintiff, against D. A. Jenkins, treasurer of the state, and A. D. Jenkins, paymaster and assistant treasurer, defendants.

On motion and on affidavit of the plaintiff that the defendant, A. D. Jenkins, has disposed of the funds in his hands for the benefit of the troops mentioned in the complaint in disregard of the order of this court, it is ordered by the court that notice of a rule be served on the said A. D. Jenkins, commanding him to appear before this court on Saturday, the 10th instant, at 10 o'clock, A. M., to show cause why he shall not be attached for a contempt of this court. Notice to issue.

R. M. Allison, plaintiff, against David A. Jenkins, treasurer, and A. D. Jenkins, paymaster and assistant treasurer, defendants.

On motion and on affidavit of the plaintiff that the defendant, A. D. Jenkins, has disposed of the funds in his hands for the benefit of the troops mentioned in the complaint in disregard of the orderof this court,

It is ordered by the court that notice of a rule be served on the said A. D. Jenkins, commanding him to appear before this court on Saturday, the 10th instant, at 10 o'clock, A. M., to show cause why he shall not be attached for a contempt to this court.

Witness, C. L. Summers, clerk of our said court, at office in Statesville, this 6th day of September, A. D. 1870.

[Seal.]

On the back of the foregoing notice is the following endorsement, to wit:

To hand Sept. 7th, 1870.

T. F. LEE, Sh'ff.

By J. J. NOWELL, D. S.

Executed Sept. 7th, 1870.

By delivering and leaving with A. D. Jenkins a true copy of the within notice.

T. F. LEE, Sh'ff.

By ALBERT MAGNIN, Dpt.

September 10th, 1870.

R. M. Allison, plaintiff, against A. D. Jenkins, defendant. } Rule to show cause in contempt.

The following is the answer of defendant, A. D. Jenkins:

SUPERIOR COURT, Iredell county,

R. M. Allison, Plaintiff, vs. D. A. Jenkins and A. D. Jenkins, defendant. }

For answer to the rule against him in the above cause made, the defendant A. D. Jenkins saith:

1. That he disclaims all purpose of committing a contempt of this honorable court or of any order by it made.

2. That he was notified, for the first time upon the 25th day of August last, of an order in the above cause enjoining him as paymaster of the state troops, and as assistant treasurer from in any way disbursing any sums of money received by him for the purpose of defraying the expenses of recruiting, transporting provisions, arming, and for the service of such troops.

3. That since the time of such notification this defendant has intended to, and has in all respects observed and kept its injunctions in all respects so far as he has been aware.

4. That he has never been assistant treasurer of the state, or had any connection with funds in the complaint mentioned, except as stated below.

5. That at the time when he was notified of the above order, he had in his hands as acting paymaster of said troops, $40,-480,12 and no more.

6. That his duties as paymaster were under a written order of William W. Holden, governor of the state, dated July 11, 1870, to him as one of his aids-de-camp (with the rank of colonel) detailing him for such service, and he had at no time any other authorization.

7. That upon the 3d day of September last, Governor Holden by a written order to that effect relieved this defendant, from such duty and ordered him to "turn over at once" to Major John B. Neathery all the money in his possession by virtue of his office as paymaster, and to send to the office of the adjutant general a final statement of all his accounts.

8. That this defendant being thereby discharged from his office, it became his duty as he was advised, to turn over to whomsoev he might be directed anything held by him in virtue thereof, and accordingly on the next day he delivered over to said Neathery the sum mentioned above. (5)

9. Such discharge of this defendant from the duties to which he had been detailed as above was made by Gov. Holden without suggestion from and without consent upon the part of this defendant; he was advised and believed that he could not resist it; and after a careful consideration of the terms and spirit of the order of injunction, this defendant was unable to see that he was thereby ordered not to settle with any successor who mght take his office, he having taken an oath at the time of his detail which bound him (at least in the absenee of an injunction to the contrary) to make such disposition of the funds in case he were relieved.

10. If this defendent hath disobeyed said order in any respect he submits that he has done so in ignorance, only intending at all times to be obedient thereto.

A. D. JENKINS.

Subscribed and sworn to before me in open court, 10th September, 1870.

C. L. SUMMERS, C. S. C.

The above rule coming on to be heard, the defendant files his answer thereto.

Thereupon, after argument by counsel on both sides, it is considered by the court that such rule be discharged.

STATE OF NORTH CAROLINA, }
Iredell county. }

I, C. L. Summers, clerk of the superior court of Iredell county, do hereby certify that the foregoing is a full, true and perfect transcript of the records on file in my office in the above recited action.

In testimony whereof I hereunto subscribe my name and affix the seal of said court, at office in Statesville, this 6th day of January, A. D. 1870.

C. L. SUMMERS, C. S. C.

Mr. McCORKLE. Mr. Chief Justice, we would like to know from the managers for what object the return to the bill in equity is introduced—whether it is as evidence of the facts contained therein so far as the respondent is concerned? If that be their object we object to it as incompetent.

Mr. MERRIMON. We offer it for every purpose that it would be lawful, and particularly for the purpose of showing that the injunction issued to A. D. Jenkins was served upon him.

Mr. McCORKLE. We do not object to that.

The CHIEF JUSTICE. The presiding officer is of the opinion that it is only competent to show that there was such a proceeding but that it is not competent to prove the facts set forth.

Mr. MERRIMON. Does the chief justice hold that it is evidence of the fact that an injunction was served.

The CHIEF JUSTICE. Yes, sir, but not as evidence of the facts set out.

AARON D. JENKINS, *a witness called on behalf of the managers, being duly sworn, testified as follows:*

BY MR. MERRIMON:

Q. What is your business? A. I am at present teller in the treasury department.

Q. How long have you been such? A. I went into the treasury department as assistant clerk. The office of teller was created after that—I do not recollect at what time.

Q. Have you been there for several months? A. Yes, sir.

Q. How long? A. At least 15 months as teller.

Q. Look at the papers in your hands and state what they are? A. These are warrants of the governor and auditor on the treasurer.

Q. Where did you get them? A. We got them from the governor.

Q. I mean where did you get them from recently? A. Out of the treasury department.

Mr. MERRIMON. We shall desire to call this witness again.

We now offer in evidence the warrants in the words following:

$1,000. STATE OF NORTH CAROLINA, No. 318.

The Public Treasurer: Pay to the order of A. D. Jenkins, paymaster of state troops, the sum of one thousand dollars under an act entitled "An act to organize a militia of N. Car-"olina," ratified Aug. 17th, 1868, and "An act to secure the "better protection of life and property," ratified Jan. 29th, 1870.

Given under my hand and seal of office, this July 11th, A. D. 1870.

W. W. HOLDEN, Governor.

Countersigned, H. ADAMS, Auditor.

Endorsed on back, A. D. JENKINS, paymaster.

$5,000. STATE OF NORTH CAROLINA. No. 323.

The Public Treasurer:

Pay to the order of A. D. Jenkins, paymaster and distributing officer, five thousand dollars, under "An act to organize a militia of N. C.," ratified August 17th, 1868, and "An act to secure the better production of life and property," ratified January 29th, 1870.

Given under my hand and seal of office this July 14th, A. D. 1870.

W. W. HOLDEN, Governor.

Countersigned, A. ADAMS, Auditor.

Endorsed on back, A. D. JENKINS, Paymaster.

$60,000. STATE OF NORTH CAROLINA. No. 331.

The Public Treasurer:

Pay to the order of A. D. Jenkins, paymaster and distributing officer, sixty thousand dollars, under "An act to organize a militia of N. C." ratified August 17th, 1868, and "An act to secure the better protection of life and property" ratified Jan. 29th, 1870.

Given under my hand and seal of office this July 22d, A. D. 1870.

W. W. HOLDEN, Governor.

Countersigned, H. ADAMS, Auditor.

Endorsed on back, A. D. JENKINS, Paymaster.

Mr. MERRIMON. We ask leave to allow certified copies of these warrants to be produced so that the original warrants may be returned to the treasurer.

THOMAS G. McLEAN, *a witness called on behalf of the managers, being duly sworn testified as follows:*

By Mr. MERRIMON.

Q. Where do you reside? A. In Graham, Alamance county.

Q. What is your business? A. I am register of deeds.

Q. Look upon the papers that I now hand to you and see if you have seen them before, and if so, where? A. I have seen these papers before. I found them in the court house in Graham.

Q. What particular part of the court house? A. In a small room just back of the judge's seat between the two jury rooms. There is a jury room on each side of the house and this small room was between them.

Q. When did you find them? A. It was the morning after Col. Kirk left Graham—after he left there last.

Q. Who had possession of the court house just before he left it? A. Kirk had possession.

Q. How? A. He came there and demanded the keys of the court house from me and I turned them over to him.

Q. Who was with him? A. There was a large number of soldiers.

Q. Do you know the handwriting in these letters which have been shown you? A. No, sir, I do not know the handwriting but I think I know the signature, having seen the same signature frequently.

Q. Whose signature is it? A. William W. Holden's.

Q. Have you seen much of his signature—have you seen it many times? A. I have seen it frequently.

By the CHIEF JUSTICE.

Q. Did you ever see him write? A. No sir; I never saw him write.

Q. What business do you follow which induced you to see his signature often? A. I am register of deeds and clerk of the county commissioners.

AARON D. JENKINS, *being recalled on behalf of the managers testified.*

By Mr. MERRIMON:

Q. Do you know the handwriting of Governor Holden? A. Yes sir.

Q. Look upon these papers which have been just produced, and see if they are in the handwriting of Governor Holden? A. [after examining.] I think they are.

Mr. MERRIMON. We ask to have these letters read in evidence.

The CHIEF JUSTICE. They may be read.

The CLERK proceeded to read the letters in the words following:

EXECUTIVE DEPARTMENT,
State of North Carolina,
Raleigh, July 30, 1870.

Col. G. W. Kirk:

Dear Sir: This will be handed you by Mr. J. B. Neathery, who has my full confidence.

An officer directly from Chief Justice Pearson will accompany him to serve a writ of *habeas corpus* on you. You are instructed to receive the officer with courtesy and endorse upon each writ as follows:

YANCEYVILLE, July, 1870.

Service accepted. John Kerr, named within, was arrested and is now detained in my custody by order of my commander-in-chief, W. W. Holden, governor of North Carolina. Therefore I cannot obey the writ.

With deference,

G. W. KIRK,
Col. 2d Reg. N. C. Troops.

EXECUTIVE DEPARTMENT,
State of North Carolina.
Raleigh, July 28, 1870.

COL. G. W. KIRK,

Dear Sir: I have just learned from citizens of Buncombe that it is important to have a detachment of troops in Asheville on the day of the election. It is also important to have a detachment in Shelby, Cleaveland county. Can you spare twenty or thirty men for each of those places? If you can I would urge that you send them at once.

Col. Clarke has sent detachments to Hillsborough, Chapel Hill, and Carthage, Moore county. The object of all these detachments is to preserve order and to secure a fair and free election.

You will have made out and forwarded to me as early as possible a list of all the persons under arrest, with a statement of the reasons for arrest in each case.

I have thought it best mainly on account of the pending election, to postpone the court martial until the 8th of August. It will certainly be held at that time. I will notify you in time as to the necessary arrangements.

I see and hear of nothing in your action that is not deserving of commendation. The edifice of crime is tottering and will soon fall. I expect to-morrow to receive important confession from Mr. Boyd, Mr. Basin and other leading Alamance Ku Klux.

Very respectfully,
W. W. HOLDEN, Governor
and Commander-in-chief.

EXECUTIVE DEPARTMENT,
State of North Carolina,
Raleigh, July 17, 1870.

To Col. G. W. Kirk, commanding post at Yanceyville:

DEAR SIR: This will be handed you by Col. Albright and Col. Ray in whom I have full confidence.

I learn that Mr. Boyd proposes to make a full confession, and then retire from public life and all connection with the Ku Klux. I leave the matter in your hands, after a full conference with Cols. Albright and Ray, and after Boyd shall have done all that may be required of him. If his action is entirely satisfactory he may be released on his parole, and if he plays false he can be again arrested.

There are many more arrests to be made, but the next list will be furnished to the judge advocate. The court must assemble on Monday, the 25th July. Some of the Caswell criminals are escaping. I want you to exercise a sound discretion as to such arrests in Caswell not on the list you have, as may be necessary.

The company in Dallas, Gaston, will be under your command, W. S. McKee, captain. He will be mustered in to-morrow. It would be well to let them remain in Gaston, as their votes will be needed, and they can have control over Gaston,

Lincoln and Catawba. Twenty or thirty of your men should be sent to Shelby, Cleaveland county, to keep an eye on Plato Durham's friends and prevent intimidation of voters.

Our friends in the mountain counties are very much concerned about the loss of votes by the absence of your men. Send as many as you can spare to Ashville Marshall, at Burnsville, so that they can vote and return. Some men will be actually needed in Asheville, at Burnsville, to ensure a free election.

I would be glad to have a full report of

The lawyers are exhausting every expedient, but they will fail. This is their last movement. It is important that the Chief Justice, who is substantially sustaining me, should be very courteously treated in the person of his messenger.

You can confide fully in Mr. Neathery, and I wish you to send me list of prisoners and witnesses together with the proofs in each case. I want to know the evidence in advance of the court.

With my best wishes for yourself and the officers and men under your command,

I am, respectfully,
W. W. HOLDEN, Governor
and Commander-in-chief.

Mr. MERRIMON. We next offer in evidence the hotel register of the National Hotel.

Mr. BOYDEN. For what purpose?

Mr. MERRIMON. We will call the witness.

ADOLPH J. RUTJES, *a witness called on behalf of the managers, being duly sworn testified as follows:*

By Mr. MERRIMON.

Q. What is your business? A. A hotel keeper.

Q. What hotel? A. The National Hotel.

Q. Is this book now produced your register? A. Yes, sir.

Q. State what time it embraces? A. From the 29th of January, 1870, we are using it yet.

Q. From that time until now? A. Yes.

Q. Look at the signature purporting to be that of George W. Kirk at the place opened to you. Have you seen that signature before—has it been called to your attention? A. I have seen it before.

Q. State what you know about it—did you see Kirk write it? A. I believe I did.

Q. Was he at your house at that time? A. Yes, sir.

Q. Do you see the name of B. G. Burgen there immediately below it? A. It is above it.

Q. Was he at your hotel at that time? A. I believe he was.

Q. What does it state there?

Mr. SMITH. Mr. Chief Justice, we object to the question. It calls for the declaration of a party not the respondent. The declarations of Burgen and of Kirk are not admissable in this prosecution against the respondent.

Mr. GRAHAM. Mr. Chief Justice we submit that they are evidence. We have proven that Kirk was sent out with this command under the orders of the governor, and have laid the foundation for the introduction of the declarations which Kirk made either in writing or otherwise. We say that in this view those declarations are competent evidence against the respondent. The acts of Kirk were encouraged, if our evidence is to be believed, by the respondent, and we hold that he stands upon the footing of a co-operator with Kirk in the transactions which Kirk was carrying on. That being the case any evidence of declaration made by Kirk either in words or writing, are competent to be given in evidence as against the respondent.

Senator GILMER. Mr. Chief Justice, that the question now raised may be settled to day, I move a further extention of our session for 15 minutes.

Senator PRICE. On that I call the yeas and nays.

Not sufficient number seconding the call, the yeas and nays were not ordered.

The CHIEF JUSTICE put the question on the motion of Senator Gilmer and it was decided in the affirmative.

Mr. MERRIMON. If it meets with the approbation of the court, Mr Chief Justice, we propose to put in the register of the Yarborough House, and leave the question raised as to the competency of the proof offered to be discussed in the morning.

The CHIEF JUSTICE. What is the date of the entry?

Mr. MERRIMON. The date in the register of the Yarbrough House is June 20th. That in the National Hotel is June 22d.

Mr. SMITH. There is also an entry in the book, showing that Kirk was registered from North Carolina, which we desire to put in evidence, if it should be decided that the others are to come in.

Mr. BOYDEN. Under date of July 10th, they are registered as North Carolinians.

Mr. GRAHAM. We submit, Mr. Chief Justice, that we can offer these declarations in connection with the respondent but that the respondent has no right to prove such declarations in his own behalf.

The CHIEF JUSTICE. You offer only those two entries.

Mr. MERRIMON. Only those two.

Mr. BOYDEN. But you have not proven that they were made.

JAMES M. BLAIR, *a witness called on behalf of the managers, being duly sworn, testified as follows:*

By Mr. MERRIMON.

Q. State to the court whether you were proprietor of the Yarbrough House at any time, and if so, when. A. I was proprietor of it from March 19th, 1867, to July 19th, last year.

Q. Look at the book now shown you, and see if you ever saw it, and if so, what it is? A. I have seen it a thousand times, I reckon.

Q. What is it? A. It is the hotel register.

Q. Is there a signature in it any where purporting to be that of G. W. Kirk and another purporting to be that of B. G. Burgen? A. I saw Colonel Kirk in the hotel on the morning

after he came. I was off to Baltimore. He got in on the one o'clock train. I saw him after breakfast in the hotel, the next morning.

Q. When? A. On the morning of the 20th of June. As the trains were running then, the western train came in at one o'clock. He staid for breakfast and left; I don't know where he went to. He just had a lodging and one meal. I was off at Baltimore and came in the night before or that morning, I don't remember which.

Q. State in reference to B. G. Burgin? A. I don't know him and would not if I were to see him.

Q. Whether he was at your hotel or not you don't know? A. I don't know. I never saw him to know him at all. My nephew was up at the time these gentlemen came in. I don't know anything about it.

Q. Where is your nephew now? A. He is in Charleston.

AARON D. JENKINS, *a witness recalled on behalf of the managers, testified as follows:*

By Mr. MERRIMON.

Do you know the handwriting of B. G. Burgen. A. I have seen his signature and I think I have seen him write, but I do not know whether I am well enough acquainted with his signature to swear to it.

Cross examination.

By Mr. BOYDEN.

Q. Have you formed from seeing him write, such a knowledge that you would know his writing if you were to see it? A. Do you mean the signature of Colonel Kirk or Burgen?

Q. I will put the question in reference to Kirk first? A. Yes, sir, I would know it.

Q. How is it, as to Burgen—I understand you expressed a doubt about that? A. Yes sir, I doubt whether I would know it.

Q. You can't say whether you know his handwriting? A. No, sir.

The CHIEF JUSTICE. The presiding officer is of the opinion that the witness is not qualified to speak of the handwriting of Burgen.

On MOTION of Senator Graham of Orange the court adjourned until 12 o'clock to-morrow.

EIGHTH DAY.

SENATE CHAMBER, Feb. 4, 1871.

The court met at 12 o'clock pursuant to adjournment, the honorable R. M. Pearson, chief justice of the supreme court, in the chair.

The proceedings were opened by proclamation made in due form by the doorkeeper.

The CLERK proceeded to call the roll of senators, when the following senators answered to their names:

Messrs. Adams, Albright, Barnett, Battle, Beasley, Bellamy, Brown, Cook, Council, Cowles, Crowell, Currie, Dargan, Epps, Flemming Gilmer, Graham of Alamance, Graham, of Orange, Hyman, Lassiter, Latham, Ledbetter, Lehman, Linney, Love, Mauney, McClammy, McCotter, Merrimon, Moore, Morehead, Murphy, Norment, Olds, Price, Robbins, of Davidson, Robbins, of Rowan, Skinner, Speed, Waddell, Warren, Whiteside, Worth—41.

Senator MOORE. I move, Mr. Chief Justice, that the reading of the proceedings of yesterday be dispensed with.

The CHIEF JUSTICE put the question, on the motion of Senator Moore and it was decided in the affirmative.

Mr. GRAHAM. Mr. Chief Justice and senators. The point which the court was considering yesterday at the time of the adjournment, was whether the hotel register of the National Hotel should be introduced in evidence, it having been proved that there was an entry on that register made by George W. Kirk and B. G. Burgen of their names. We submit that it is competent evidence on one of the issues now pending.

These articles alleged by way of aggravation of the offenses imputed to the respondent, that he brought from the state of Tennessee, Kirk, Burgen and others as instruments for the execution of the crime which he was about to commit. The answer of the respondent at page 41 "denies "that the men composing said volunteer militia were many of

"them the most reckless, desperate, ruffianley and lawless "characters from the state of Tennessee; on the contrary this "respondent declares that the said men were citizens of North "Carolina at and immediately before the organization of said "militia and were of good deportment and behavior, and were "received and organized strictly according to the provisions "of said act and not otherwise ?." He further says "that the "said George W. Kirk, B. G. Burgen and H. C. Yates, officers "in command of said volunteer militia, were at the time of "the organization of the said militia and immediately before, "citizens of North Carolina and were duly commissioned and "sworn."

That, sir, is the issue between the parties. Now in order to support the allegations on the part of the managers, we have offered to exhibit to the court the declarations in writing of Kirk and Burgen on the 22d day of June, 1870, that they were citizens of East Tennessee. We say, in the first place, that the evidence is admissible upon the ordinary practice of legislative bodies in relation to contested elections. The seat of a member is contested. The contestant offers to prove that certain persons who voted were not citizens of the county where they cast their votes. What is the ordinary mode of proof? It is to prove that *ante litem motem*—before the election—the man said he was a citizen of another county. I say that evidence of that kind is ordinarily and I think universally received in contests of that nature.

But we say in addition to that, that upon the doctrine of agency, of complicity, of conspiracy, this evidence is competent to be received here. We have identified the respondent with Kirk. We have shown that he brought Kirk here and that he sent him upon this unlawful expedition and that Kirk's acts and declarations are evidence against him as they would be against himself if he were upon trial.

This point was raised on the trial of President Johnson before the Senate of the United States. It may be necessary to state that General Thomas, who was on an occasion attempted

to be substituted for Mr. Stanton as secretary of war, was prior to the time of his appointment, adjutant general of the army of the United States; and the declarations of Thomas made before he received the appointment of secretary of war and before he attempted to oust Stanton from the office were offered in evidence. It was objected to but the Senate, after full discussion, voted that the evidence was admissible. On page 211 of the reported proceedings, this question was put to a witness:

"Q. Shortly before this conversation about which you have "testified, and after the president restored Major General "Thomas to the office of adjutant general, if you know the "fact that he was so restored, were you present in the war de-"partment, and did you hear Thomas make any statements to "the officers and clerks, or either of them, belonging to the "war office, as to the rules and orders of Mr. Stanton of the "office which he, Thomas, would revoke, relax or rescind in "favor of such officers and employees when he had control "of the affairs therein? If so, state when, as near as you can, "it was such conversation occurred, and state all he said as "nearly as you can?"

The question was objected to and discussed and on page 214 of the records, occurs this language:

"The CHIEF JUSTICE. The question is, shall the ques-"tion proposed by Mr. Manager Butler be put to the witness.

"Mr. HOWARD. On that question I ask for the yeas and "nays. The yeas and nays were ordered; and being taken, "resulted, yeas 28, nays 22.

So it was the ruling of the senate that the declarations of Thomas prior to the time when he was appointed secretary of war, and when he held the position of adjutant general should be admitted, upon the ground that the president intended to appoint him to the office of secretary, and that what Thomas said was admissible as evidence against the president.

But I say, sir, that, independent of that decision, upon the ordinary principles of common law (which this court is to accept

so far as it sees proper to adopt them) a co-trespasser is boun
by the acts of the man who commits the trespass and not onl
by his acts, but by his declarations, and it does not matte
whether it was before the trespass or whether it was after th
commission of it. How does that apply here? Here thes
fellows have imprisoned citizens. They did so with the ap
probation and by the command of the respondent and the re
spondent is bound by what Kirk said. The declarations o
Kirk are material to support the allegations contained in th
articles, and are competent to be given as against the respon
dent.

In 12 English Common Law Reports, page 504, this questio
arose in the case of Wright vs. Court, Bolton and Chamber
and as the case is short I will read the whole of it.

The marginal note is as follows:

"If these defendants have jointly imprisoned the plaintif
"the declaration of one of the defendants, made some week
"after, in the absence of the others, tending to show that th
"imprisonment arose from malice, is admissible in evidence, i
"an action for false imprisonment brought against all three."

I now read the statement of the case and the opinion of th
court:

"The defentdant, Court, was the constable of Tardebig, i
"the county of Worcester, and the other defendants were needl
"manufacturers at that place, who, having been robbed of a co
"siderable quantity of needles, with the assistance of the othe
"defendant, took the plaintiff into custody on the 3d day o
"November, 1824, and locked him up in the cage at Redditch
"and there kept him till the 6th of November, without takin
"him before any magistrate. However, on the 6th they too
"him before the Rev. Lord Aston, a magistrate, who remande
"the plaintiff for two days longer, when he was discharged.

"The plaintiff's counsel wished to give in evidence, th
"several weeks after all the defendants had locked the plainti
"up in the cage, the defendant, Court, said, "I will take care th
"neither of the Wrights shall have a bed to lie on before th

"end of six months." At the same time this was said the "other defendants were not present.

"JURIS, for the defendants, objected, that this declaration of "the defendant, Court, ought not to be received in evidence, "because it was made in the absence of the other defendants. "In this action the plaintiff proceeded for an alleged injury com-"mitted on him by the three defendants jointly; now this at most "was only a manifesting of individual malice in the defendant, "Cant, and not at all connected with the other defendants, or "having any relation to the joint act done by all of them. He "would submit that there could not be a stronger case to show "the hardship of receiving such evidence than the present. The "damages, if any would be joint against all the defendants, and "those damages would be much increased if this expression of "individual malice was received in evidence. Now it was quite "clear that if a verdict passed for the plaintiff, as one of the defen-"dants was only a constable and the others highly respectable "manufacturers, the plaintiff would sue out his execution for "the whole damages against the latter, although the amount of "them was much swelled by the individual declaration of the "former.

Garrow, B. I am of opinion that this declaration of "the defendant, Court, is evidence. It is necessary, that the "plaintiff shold connect all the defendants as joint trespassers "in the fact of imprisonment, and having done so, I must "receive in evidence anything that either of the defendants "said relative to the trespass, though in the absence of the oth-"ers, so much as to the law. On the hadship of the case, I "need only say, that if the law were not so, a man going to do "another an injury might proclaim his malice in the market "place, and yet shut out evidence of such malice from the con-"sideration of the jury, by only associating himself in the trans-"action with persons a shade less guilty than himself; and per-"sons may always avoid the declarations of the malice of these "co-defendants operating against them, by taking care not to

"be concerned in the doing of things which they cannot after-
"wards justify."

That, Mr. Chief Justice, is a general decision to the effect that defendants being connected together in a trespass, a sufficient foundation is laid for the purpose of introducing the declaration of any one of them against the rest. Here, we say, we have laid the foundation by showing various acts and correspondence of the respondent with this man Kirk added to which are the admissions of the respondent in the answer that he appointed Kirk to this office. The respondent denies in his answer that Kirk was a Tennesseean a fact which we here affirm and offer to prove by the fact that at, about the time he received his commission from the state government of North Carolina, whither he had come for the purpose of embarking in this business, he advertised himself as a citizen of Tennessee. We say that the evidence is competent.

Mr. SMITH. Mr. Chief Justice, there are two grounds upon which the managers propose to introduce the evidence objected to. One is, that this is in the nature of a declaration connected with an act establishing residence, and is competent as against any body. The other is, that it is in the nature of a declaration of one of two conspirators, and is admissible against the other as well as against himself.

Now, sir, in regard to the first point, it is very clear that this is a mere naked declaration itself,—an entry in writing upon a hotel register of residence, and it is precisely in the nature of a declaration made in the street at that time by some party in the absence of the accused. It is, furthermore, a declaration having relation to no act which, by qualifying the act, might make it admissible.

Now, is it competent as against this accused, to show a declaration made by a subordinate officer of his of a fact not material to the accusation? This entry was made upon 20th of June. The first communication established between the accused and this officer I believe was on the 21st or 22d.

Mr. GRAHAM. The entry offered is on the 22d of June

The other on the Yarborough House register is not yet proven.

Mr. Manager SPARROW. He first went to the Yarborough House and then to the National Hotel.

Mr. SMITH. I supposed, from conferring with my brother Merrimon, the first entry was on the 22d, but I misunderstood him.

But in regard to that entry, it is in no sense one of those declarations which can deprive a citizen of one of his first rights. If the question of residence is a material one it must be shown in the way in which any other fact is to be shown. Where a person's place of residence is, is not to be determined by his declaration but by proof of where, in fact, his home is. This sort of proof can only bear against the party making the declaration and not against the respondent.

But, sir, the main ground upon which this entry is offered is that it is a declaration of one of several conspirators and is, therefore, competent against all. Whatever may be said in reference to the rule in the case cited from Carrington and Payne quoted by the counsel for the managers, and also referred to in the trial of President Johnson, it is, in the judgment of the counsel for the respondent, unsound law if it is cited for the purpose of authorizing the introduction of this proposed evidence. We think that the rule of law in all the authorities on evidence is that whatever is said or done by one of several conspirators *in furtherance of the object of that conspiracy* is evidence against all. Nothing that is said by one of them outside of the scope and purpose of the conspiracy is admissible against either of the other conspirators. In other words the declaration must be at the time, *dum ferret opus*—while the work is being prosecuted, and is thereby in the nature of an act. It then becomes admissible because the common purpose is arrived at by the declarations and acts of each one. The rule is laid down in 1 Greenleaf, section 111, as follows:

"The connection of the individuals in the unlawful enter-
"prise being thus shown, every act and declaration of each
"member of the confederacy, in pursuance of the original

"concerted plan, and with reference to the common object, "is, in contemplation of law, the act and declaration of them "all; and is therefore original evidence against each of them. "It makes no difference at what time any one entered into the "conspiracy. Every one, who does enter into a common pur-"pose or design, is generally deemed, in law, a party to every "act, which had before been done before by the others, and a "party to every act, which may afterwards be done by any of "the others, in furtherance of such common design."

Further on this language is used:

"And here, also, care must be taken that the acts and "declarations, thus admitted, be those only which were made "and done during the pendancy of the criminal enterprise, "and in furtherance of its objects. If they took place at a "subsequent period, and are, therefore, merely narative of "past occurrences, they are, as we have just seen, to be "rejected."

Again in the third volumn Greenleaf uses this language:

"The principle on which the acts and declarations of other "conspirators, and acts done at different times, are admitted in "evidence against the persons prosecuted, is, that by the act "of conspiring together, the conspirators have jointly assumed "to themselves, as a body, the attribute of individuality, so far "as regards the prosecution of the common design; thus ren-"dering whatever is said or done by any one, in furtherance of "that design, a part of the *res gestæ*, and therefore the act of "all. It is the same principle of identity with each other, that "governs in regard to the acts and admissions of agents. When "offered in evidence against these principals, and of partners, "as against the partnership, which has already been consider-"ed. And here, also, as in those cases, the evidence of what "was said and done by the other conspirators must be limited "to their acts and declations made and done while the con "spiracy was pending, and in furtherance of the design; what "was said or done by them before or afterwards not being "within the principle of admissibility."

In addition to these authorities, sir, we, have a decision in our own courts that settled the principle in the same way. It is the case of the *State vs. Haney*, in 2 Devereaux and Battle, page 395, in which Judge Gaston states the rule thus:

"But when a privity and community of design has been "established, the act of any one of those who have combined "together for the same illegal purpose, done in furtherance of "the unlawful design is in the consideration of law, the act of all.

"The cases in which this doctrine is most frequently applied, "are those of treason and conspiracy, when it is perfectly settled "that after proof of the association for a traitorous or illegal pur-"pose, the declarations, acts and conduct of all the associates, "in furtherance of their common purpose is evidence against "each and every of them."

So that, as we understand the rule of law to be, words are sometimes more than declarations they are in the nature of acts, and are a part of the *res gestæ*, and are, in reality, if they relate to a common object, the acts of all engaged at the time in its prosecution. It is analagous to the doctrine of principal and agent. It is perfectly clear that no declaration or act of an agent, outside of his authority, is competent to affect the principal. The agency has its limitations, and outside of those limitations the acts of the agent are no more admissible against the principal than if the relation did not exist at all. For all other purposes than those the agency contemplates, the relation does not exist; so that in regard to conspiracy, if there be any here the relation between these parties does not exist for any other or further purpose than the accomplishment of the illegal purpose which they have in view.

How, then, in the light of these authorities, does this entry on a hotel register made by Kirk tend to show anything in reference to the execution of a common design of conspiracy? Is it a declaration like that admitted in the case reported, in Carrington & Payne, showing the malicious purpose of those engaged in imprisoning the plaintiff? Have the words entered in the hotel register any relation to a conspiracy? They are totally

outside of this enquiry into the legality of the acts of this respondent, and we think that, in no point of view, can the entries be introduced for the purpose of violating what we regard as a well settled and clearly established rule of law that no person is to be impeached or punished by evidence with which he was not confronted or by evidence not upon oath, unless it falls within some clear principle of law making it virtually his own declaration or his own concession.

Mr. GRAHAM. Mr. Chief Justice and senators, the declaration is admissible within the narrow principles to which the gentlemen wishes to confine the doctrine. I have produced and read an authority from the English Common Law Reports which he does not deny except to question its correctness. I submit that that authority itself in the absence of anything to overrule it is decisive on the question.

But, sir, within the restricted limits to which he seeks to confine the doctrine, the declaration is admissible in evidence as a part of the unlawful design of the respondent to bring here men from East Tennessee, as we allege, of desperate and lawless character. That we have connected the repondent and those men together, the tryers of fact in this court will not fail to discover. The arrival of these men on the 20th of June was not without previous correspondence. This court cannot fail to recognize that as a matter of common inference. On the 21st of June there is a communication in writing passing between them. On the 22d day of June this man, believing that he had a name that would inspire terror in North Carolina by the announcement of his presence, records himself in a public hotel in the city of Raleigh at the seat of government as "Colonel G. W. Kirk, East Tennessee." It is the same as if he had gone out saying, "I have been commissioned by the "governor to go and chastise the people of Alamance and Cas-"well counties, and I will do it by fire and sword." If he had made such an announcement could we not prove the fact?

Then, considering the allegation here made against the respondent which we shall expect to verify, it will be seen that the

declaration of Kirk is made in pursuance of a common design, that by the announcement of his name the people of the state were to be terrified and put in fear.

This matter of residence is very often a question of *quo animo*, and the declarations of parties are admissible upon that ground also. A man may make a change if he pleases but he must do it in a certain way; but so long as he declares himself a citizen of a particular place, if it be *ante litem motem*—before this expedition went and before the arrests were made, the declaration is competent to be received in evidence.

Mr. BRAGG. Mr. Chief Justice, I am free to confess, sir that, as a general rule, declarations of third persons are not evidence against any party who is on trial in any case in which he is concerned. But there are exceptions to that rule, as you well know, in regard to hearsay evidence, affecting many matters, and especially the question of domicile.

Here sir is a question of fact. It is averred by the prosecution that George W. Kirk was a citizen of Tennessee and not a citizen of North Carolina. On the other side it is averred that he was a citizen of North Carolina; and we offer in evidence the declaration of George W. Kirk himself as to the fact which is to be passed upon by this court, as a jury which passes upon both the law and the fact. The question is whether, as independent evidence, the declaration of George W. Kirk can be given to show where his domicile really and in fact was. I have several authorities on that question and I am happy to say that my friends on the other side have furnished me one in Greenleaf, section 108, under the head of "hearesay evidence." I read:

"There are *other declarations*, which are admitted as original "evidence, being distinguished from hearsay by their connection "with the principal fact under investigation. The affairs of "men consist of a complication of circumstances, so intimately "interwoven as to be hardly seperable from each other. Each "owes its birth to some preceding circumstances, and, in its "turn, becomes the prolific parent of others; and each, during

"its existence has its inseperable attributes, and its kindred fa
"materially affecting its character, and essential to be kno
"in order to a right understanding of its nature. "These s
"rounding circumstances constituting parts of the *res ges*
"may always be shown to the jury, along with the princi
"fact; and their admissibility is determined by the judge,
"cording to the degree of their relation to that fact, and in
"exercise of his sound discretion; it being extremely diffic
"if not impossible, to bring this class of cases within the lin
"of a more particular description! The principal points
"attention are, whether the circumstances and declarati
"offered in proof were contemporaneous with the main f
"under consideration, and whether they were so connec
"with it as to illustrate its character! Thus, in the trial
"Lord George Gorden for treason, the cry of the mob who
"companied the prisoner on his enterprise, was received
"evidence, as forming part of the *res gestæ*, and showing t
"character of the principal fact! So, also, where a per
"enters into land to take advantage of a forfeiture, to foreel
"a mortgage, to defeat a *disseisin*, or the like; or chan
"his actual residence, or domicil, or is upon a journey,
"leaves his home, or returns thither, or remains abroad,
"secretes himself; or, in fine, does any other act, material
"be understood; his declarations, made at the time
"the transaction, and expressive of its character, motive,
"object, are regarded as "verbal acts," indicating a pres
"purpose and intention, and are therefore admitted in pro
"like any other material facts; so, upon an enquiry as to t
"state of mind, sentiments, or dispositions of a person at a
"particular period, his declarations and conversations are adm
"sible. They are parts of the *res gestæ*."

I have another case reported in 1 Iredell, page 305—Fle
ing *vs.* Straley, which was of this character. It was an acti
for debt brought in Burke county against a defendant residi
in Yancey county. The defendant alleged that the plan
was a resident of Yancey and not of Burke and that hence

had no right to bring an action. Judge Daniel delivered the opinion of the court in which he used this language :

"The defendant had not proved any declaration made by "the plaintiff of his then abandoning his domicile in Burke, "but he had offered in evidence certain facts from which he "wished the jury to presume an abandonment by the plaintiff "of his domicile in Burke at the date of the writ. To repel "an inference of that kind from the facts proves by the de-"fendant the evidence objected to was offered by the plantiff "to show how the family in which he was then living re-"garded this movement of his. How the witness derived his "knowledge of the impression of the family, is not stated. "He may have so understood it from the conversation which "passed between the plantiff and the members of the family, "at the time of his setting off for Yancey, or from the conduct "of the plantiff and family, or from the plantiff's leaving "necessary articles of property, &c. It does not appear that "the witness came to this knowledge by the *ex parte* hearsay "of any of the members of the family."

So in the case of Horne *vs.* Horne. The question involved there was whether a party who had made his will was domiciled in South Carolina or not, the will having only two witnesses, whereas, by the laws of South Carolina, it was required to be attested by three. It was alleged that he was domiciled in South Carolina when the instrument was executed. The whole question is gone into in that case as to what constitutes a domicile. It is a matter hereafter for investigation whether the change of place by Kirk was equivocal. There are other matters which we expect to put in evidence to show that he was a citizen of Tennessee. That question will come up before the court passes upon the question of fact. But in the case of Horne, the declaration of the testator was put in evidence. It was stated by the judge that the question of domicile was a question of intent and, to get at the intent, the declaration of the party was admissible as evidence—whether in fact the party

had changed his domicile—a mere change of place be
equivocal.

Mr. BOYDEN. Mr. Chief Justice, I am not a little s
prised that this case of Wright *vs.* Court and Bolton and Ch
bers, should be read as an authority upon the propositior
the gentleman. What is the case? Three men are sued
assault and battery and false imprisonment and the gentlen
says that the court gravely decided that what one of
defendants said is evidence against the others. Did anyb
ever doubt about the admissibility of such declarations
such a case like that? Sir, that is correct. Let me read
head note of the case.

"If three defendants have jointly imprisoned the plain
"the declaration of one of the defendants made some we
"after, in the absence of the others, tending to show that
"imprisonment arose from malice, is admissible in evidence
"an action for false imprisonment brought against all thre

Who would hazard his reputation by asserting that that
not good law? But does the entry offered here—w
another man said about his personal residence—have the slight
tendency to show the guilt of the respondent now on tri
I admit that if a conspiracy had been proved and the
spondent was on trial on a charge of conspiracy, and
declaration had any tendency to show the nature of the c
spiracy or was in any shape or form in furtherance of the c
spiracy, that entry would be evidence. But how, in any mann
does this fact of the residence of this man Kirk connect
respondent with the conspiracy, if it were charged?

And, sir, the case of Horn has no more application to
case now on trial than the case of Wright *vs.* Court, cited
the gentleman from the English Common Law Repo
What a man says about his own residence, when he makes
will, is without any doubt competent testimony.

The residence, they say, is a matter of intention. The m
residence depends upon his intention. There were two par
in the case of Horn, claiming that estate, one under the

and another an heir at law. Who could doubt that the declaration of the testator as to his residence was competent evidence?

And this case cited, from Devereaux and Battle, I have forgotten the title, has just as much relevancy as the case of Horn to establish the proposition, and not a whit more, according to my judgment. They might as well read any case in the books as going to show authority that this was evidence, as to read the cases they have. The doctrines laid down in those cases they have read are good law, and all that the court decides in this English case is that what a man says is evidence against himself. That is, all there is in it—there is nothing more and nothing less. In that English case three were sued. And was it ever held in a court of law and will it ever be contested by any one who has read Blackstone that what any one of those defendants said was not evidence in the case against all?

And the authority read by the gentlemen last up from Greenleaf is perfectly good law. It holds the same doctrine contended for on our side that the declaration *must be connected with and in furtherance of the common design.* It seems to me there is nothing clearer in law than that principle, and under it, this proof offered here certainly is not evidence, first, because there is no connection between it and the common design, and again, if this fact of residence is to be proven it is be proven in another way and not by this declaration.

I admit, Mr. Chief Justice, that if Kirk were on trial and a question was raised as to his residence, this would be good evidence against him; but it is no evidence against the respondent because it is not in furtherance of any common design whatever.

Mr. GRAHAM. Mr. Chief Justice, the gentleman who last addressed the court I think is very easily surprised, but it appears to me that the surprise struck the different counsel on the other side in a rather different way. The first gentleman [Mr. Smith] states that the case decides what I have alleged and then he says that it is a wrong decision. The last gentleman

[Mr. Boyden,] undertakes to narrow the decision to small limits and then admits that it decides all I contended for; for the very point in the case was whether the declaration made by one of the defendants was to effect any body but himself. There is no evasion—no quibble, but the learned judge meets the question fairly and says it is to affect the others just as much as the man who uttered it by his own mouth.

So that the question comes back simply to this, whether the declaration made by Kirk in writing, after the conspiracy had been established between him and respondent can be proved as an act in furtherance of the common design. His name and residence were entered on the register to publish to the people that the man who was the terror of East Tennessee had been brought here to be a terror to the citizens of this state. We say that the evidence is competent, therefore, upon the ground that the act was in furtherance of the common design.

The CHIEF JUSTICE. In the opinion of the presiding officer, the evidence offered is not admissible. When a combination is proved, any act or declaration of one is evidence against all, provided it be done or said in furtherance of the common purpose. A combination to put a military force in active service has been proved, but the written declaration of Col. Kirk and Col. Burgen was not calculated or intended to aid in carrying out the common purpose. The question of domicile, does not, in the opinion of the presiding officer, form a part of the *res gestæ*. The question is not as to a change of domicile or the animus or intention of the person making the written declaration in regard to his domicile, so that the doctrine of *res gestæ* is not relevant.

Mr. Manager SPARROW. Mr. Chief Justice, the managers would be glad to have the opinion of the senate upon this question.

The CHIEF JUSTICE. Does any senator call for the vote of the senate?

Senator GRAHAM, of Orange. I call for the vote and would submit, Mr. Chief Justice, whether the evidence offere

is not admissible to contradict that part of the answer that these men were not from the state of Tennessee?

The CHIEF JUSTICE. That was considered by the presiding officer in giving his opinion.

Senator ROBBINS, of Rowan. I call for the yeas and nays.

Senator GRAHAM, of Orange. The vote is to be taken by yeas and nays under the law.

The CHIEF JUSTICE. But the call has to be seconded.

A sufficient number seconding the call, the yeas and nays were ordered.

The CHIEF JUSTICE put the question on sustaining the opinion of the chair.

The CLERK proceeding to call the roll. Before the vote was announced ——

Senator MOORE. Mr. Chief Justice, I would like to have the vote of the senator from Sampson.

Senator MURPHY. Mr. Chief Justice, this is a question of law which I cannot decide myself and I beg to be excused from voting.

Senator MOORE. I insist opon the senator voting.

The CHIEF JUSTICE. I believe the senator is required by the rules to vote.

Senator ROBBINS, of Rowan. I move that the gentleman from Sampson be execused.

The CHIEF JUSTICE. Is the motion seconded?

Senator DARGAN. I second the motion.

Senator SPEED. I ask for the yeas and nays.

Senator ROBBINS, of Rowan. I withdraw the motion to excuse the senator to save time.

Senator MOORE. The withdrawal is too late.

Senator ROBBINS, of Rowan. I rise to a point of order that it is in order to withdraw the motion at any time before the vote is taken.

The CLERK proceeded to call the name of senator Murphy, whereupon the senator voted yea.

The CLERK announced the vote as follows:

Those who voted in the affirmative are:

Messrs. Albright, Barnett, Battle, Beasley, Bellamy, Brown. Cook, Council, Cowles, Crowell, Currie, Dargan, Eppes, Flemming, Flythe, Gilmer, Hyman, Latham, Ledbetter, Lehman, Linney, Love, Mauney, McClammy, McCotter, Merrimon, Moore, Murphy, Olds, Price, Robbins, of Davidson, Robbins, of Rowan, Skinner, Speed, Waddell, Warren, Whiteside and Worth—38.

Those who voted in the negative are:

Messrs. Graham, of Orange, and Norment—2.

So the opinion of the chair was sustained.

Senator MERRIMON. Mr. Chief Justice, there is nothing in the rules which requires that any senator shall vote if he shall not desire to do so.

The CHIEF JUSTICE. The question raised is not relevant as the senator has voted.

Senator ROBBINS, of Rowan. I would suggest that the rules of the senate apply to this court wherever they are applicable, and one of the rules of the senate requires that every senator shall vote if he is within the bar, unless he is excused.

The CHIEF JUSTICE. The presiding officer would suggest that the proposition of the senator has no application now because the senator from Sampson has voted.

Senator ROBBINS, of Rowan. I am aware of that; I was only speaking to the point raised by the senator from Buncombe, [Mr. Merrimon.]

Senator GRAHAM, of Orange. Mr. Chief Justice, to decide the question, I move that the rules of order of the senate, as far as they are applicable, be the rules of this body.

The CHIEF JUSTICE. The presiding officer would suggest that while the managers and counsel are trying their case before the court these motions are not properly in order. Any action like that proposed should be determined in the morning before the commencement of the proceedings on trial. The presiding officer simply throws out the suggestion, subject however to the approval of the court.

Senator GRAHAM, of Orange. I will not insist upon the motion now.

The CHIEF JUSTICE. The presiding officer observes, that in the impeachment of President Johnson, the counsel retired when the senate desired to consult.

Senator GRAHAM, of Orange. The purpose, Mr. Chief Justice, in this proceeding, was to have all proceedings conducted in open session.

Mr. MERRIMON. We next offer in evidence the rallying proclamation of George W. Kirk, printed in the form commonly known as a "poster," and we propose to follow this by showing that the proclamation was written by the accused.

Mr. BOYDEN. We object to the admission of the paper offered unless it is proven.

CORNELIUS B. EDWARDS, *a witness called on behalf of the managers, being duly sworn, testified as follows:*

By Mr. MERRIMON:

Q. Where do you reside? A. In the city of Raleigh.

Q. What was your business in the months of June and July last? A printer.

Q. Where were you employed? A. In the job department of the *Standard* office.

Q. Where was the *Standard* printed? A. In the city of Raleigh.

Q. Look upon the paper now produced and state where it was printed [handing the witness a printed poster]? A. It was printed in the *Standard* office.

Q. Under whose directions? A. I am unable to say positively under whose directions.

Q. State all you can about it? A. I do not know who brought it there.

Q. Who superintended the printing and gave you directions about it? A. I superintended the printing but I do not know who brought the order, nor by whose authority it was printed. I think it came from the executive office.

Mr. McCORKLE. You will speak of your own knowledge.

Q. State the usual course of business in papers coming from the exective office to be printed, if you had any business of that sort? A. They generally have written directions on them.

Q. Did you know the clerks about the executive department personally? A. Yes, sir.

Q. Were the papers sent from the executive office to the printing office by clerks through messengers? A. They were generally brought by messengers.

Q. When a paper was brought you knew it was from the executive officer by the messenger who brought it?

[Question objected to.]

Q. State how that is? A. I generally understood it in that way.

By the Chief Justice:

Q. Do you know or do you infer it? A. I merely infer it.

Q. If a messenger brought a paper to your office to be printed you infered it to come from the executive office?

Mr SMITH. We object, Mr. Chief Justice, to this evidence.

Q. Was it usual or otherwise to send work to be printed from the executive office to your office? A. Yes sir.

Q. Was the printing of the executive office done at your office? A. All the state printing was done there.

Q. Was the manuscript from which this poster was printed sent to your office by any one from the executive office? A. I do not remember.

Q. You do not know who brought it there? A. No, sir.

Q. State whether it was George W. Kirk who brought it there.

Mr. SMITH. I suggest, Mr. Chief Justice, that the witness is speaking with reference to the manuscript and not the printed paper which the gentleman has introduced. We object to any proof whatever in reference to the absent paper on the ground that the paper should be produced.

Mr. MERRIMON. I shall ask about that directly.

Q. Did George W. Kirk give you any directions about that

printing? A. There was a man called for it who I afterwards heard, was George W. Kirk, but I did not know him myself.

Q. Did you see him afterwards? A. I have never seen him since.

Q. Where is the manuscript of that printed paper? A. The manuscript was usually kept on a file; I do not know whether it is now or not.

Q. Do you know the handwriting of Gov. Holden. A. I know his signature and I presume I would know his general handwriting.

Q. Was that manuscript in his hand writing?

Mr. BOYDEN. We submit, Mr. Chief Justice, that the question is clearly incompetent, that the paper itself must be produced.

Mr. MERRIMON. We do not ask the question to get at the contents of the paper. We offer to prove the independent. fact that the manuscript was in his handwriting.

Mr. BOYDEN. It is very clear that that cannot be done There is no better rule known than the one upon that subject. A witness is called, "look upon this paper and see if it pur-"ports to be in the handwriting of A B." "Are you acquaint-"ed with his handwriting by seeing him write so that you "would know his handwriting when you saw it?" "Is "this his handwriting?" We submit that that is the legal method of proof.

Q. Have you been summoned to produce the manuscript of this paper? A. Yes, sir.

Q. Why have you not produce it? A. Because it is not in my possession. I have no control of the job department at present.

Q. Who has? A. I presume Sheriff Lee. The office was sold on an execution sometime ago.

Q. Who has the books and papers in that office? A. I do not know.

Q. When did you see the manuscript of that paper last? A. It was printed some time in June I think.

Q. Have you not seen it to-day? A. I have not got it.

Q. Have you not seen it to-day? A. Yes, sir, I have seen it to-day.

Q. Why did you not bring it? A. Because it was in the *Standard* office and I had no right to take it out.

Q. Did anybody prevent you from bringing it? A. No, sir.

Q. Did anybody tell you not to bring it? A. No, sir.

Q. Did not the subpœna direct you to bring it? A. It summoned me to produce it.

Q. You had it in your hands, you say. What did you do with it? A. I presume it is at the *Standard* office.

Q. What did you do with it—that is the question? A. I stated just now that I left it at the *Standard* office.

Q. Who let you into the *Standard* office this morning? A. My brother is working there.

Q. Who showed you where the paper was? A. In all job offices they usually keep a file of all work done.

Q. Was this paper on file there? Yes, sir.

Q. Was it taken off the file when you saw it.

By the CHIEF JUSTICE.

Q. Was it taken from the bundles where it was rolled up when you saw it? A. It was not rolled up.

Q. Was it not tied up in bundles like this? A. No, sir; it was inserted on a wire.

By Mr. MERRIMON, (resuming.)

Q. Was it taken off the wire? A. Yes, sir; I took it off.

Q. Did you put it back on the wire? A. I did not, but I ordered it to be put back.

Q. Who did you order to put it back? A. My brother.

Q. Did you see him put it back. A. No, sir.

Q. Do you know where it is now? A. I presume it is there.

Q. Are you sure about that? A. No, sir.

Q. Are you sure you have not got it in your pocket? A. Yes, sir.

Q. You know you have not got it in your pocket? A. Yes, sir.

Mr. GRAHAM. Mr. Chief Justice and senators, I move that the witness be required to produce the paper in twenty minutes, or be committed for contempt of this court.

Mr. McCORKLE. I suppose, Mr. Chief Justice, that such a motion as that cannot be entertained. There must be some ground work laid first for the granting of such an application. The managers must show that this witness was the proper custodian of that paper before they can compel him to produce it. Sir, the proposition is a monstrous one, that if I were summoned to produce a paper that does belong to me and over which I have no control, a court at any moment may punish me for not producing it in response to its subpœna. Unless this witness was the custodian of that paper, no such motion can be entertained. Further than that, even if he had it in his possession the fact would have to be shown by evidence before this motion could be granted. What is the proposition on the part of the managers? They notify the witness to produce a certain paper. He says, "I have no control over that "paper, I saw it this morning but it does not belong to me "and therefore I had no right to take it from those to whom "it does belong." And now, sir, simply because the witness does not forcibly take that paper out of the hands of the proper custodian in obedience to the subpœna the proposition is to commit the witness for contempt. Sir, the proposition is, as I said before, monstrous and cannot be entertained for a moment.

Mr. GRAHAM. Mr. Chief Justice, this is not a matter of form or ceremony. It is a question whether this court will permit itself to be trifled with in the important matter of the production of evidence. A subpœna *duces tecum* is served in this witness. He goes and gets the paper in the place where it is deposited, reads it and satisfies himself of its identity, is forbidden by no one to bring it here in response to the mandate of the court, leaves the paper where he found it and then comes here without producing it, and after a good deal of

evasion admits all these facts. The question is whether h shall not himself be compelled to produce it.

Mr. MERRIMON. If this witness had not come here an deposed to the facts, he has it would he be proper as stated b the counsel to have an affidavit upon which to base our motior But it is unnecessary here because he has come into court an stated that he has not brought the paper, that he saw it to-day that he took it from the file, had it in his custody and that afte having it in custody he declined to bring it but directed h brother who was present at the time to put it back on the fil

Now, sir, I do not understand the rule of law to be as la down by the gentleman on the other side in respect to th duty of the witness in the premises. Suppose I have a lett in my possession which belongs to A B and not to me. It handed to me for temporary purposes, and a subpœna comes me while it is in my possession charging me to produce th letter before this court or any other court of competent jur diction, will it be pretended that under such circumstances would not be able to produce it? This witness says that H had the paper to-day, that he had control of it, and havi control of it he handed it back to another person.

The CHIEF JUSTICE. He did not say he had control o it, but that he had it in his hand.

Mr. MERRIMON. And he ordered it to be put back o the file.

The CHIEF JUSTICE. He stated that he told his brother to put it back on the file.

Mr. MERRIMON. Having done that he comes into this court and says he has not got it. Let me recur to the illustration I made. I have the letter of A B at the time when a subpœna comes to me charging me to produce it before this court. Another party to whom the letter belongs says, "I want that letter—hand it back to me." I humbly submit that if I were to give him the letter and not produce it in evidence to the order of this court I would be subject to an order of attachment for my disobedience.

Examination resumed.

By Chief Justice:

Q. Could you have got that paper and brought it here if you had wanted to? A. I could have got the paper but I was under the impression that I could be indicted for a forcible trespass.

Q. If you took it out of its place? A. Yes, sir.

Q. Who has the keeping of that paper—

Mr. BADGER. I can perhaps explain the matter. The *Standard* office was sold at public auction some thirty days since, and has been exclusively under the control of the sheriff of Wake county from that time until the present. There are several suits now pending in regard to it. I know nothing about the witness getting the paper.

The Witness. I stated to the party who served the subpœna on me, that I did not feel at liberty, as the sheriff can testify, to enter the office and take that paper out. The question was asked me who was in control of it by Judge Merrimon and I told him that I supposed it was under the control of the sheriff, and he said he would have him subpœned.

By the Chief Justice.

Q. How did you come to go and look at the paper this morning? A. There was a subpœna served on me and I found it was in regard to this poster, and I went to satisfy my mind.

Q. Who did you go to to get the manuscript? A. I went to my brother.

Q. What has your brother to do with it? A. He is at present working in the job office.

Q. You got him to go with you and take it off the wire to look at it? A. Yes, sir.

Q. And you handed it to him to put it back? A. Yes, sir.

Q. Do you tell this court that you cannot, without committing trespass, produce that paper, or can you without it? A. That is a legal question which I am unable to answer.

Q. You have nothing more to do with it than I have? A. I have no control over that office whatever.

Q. No more than I have? A. No, sir, none whatever.

By Mr. GRAHAM.

Q. Have you not power to ask for the paper, and if you did ask would there be any resistance to your taking it? A. I do not know as there would under ordinary circumstances.

Q. You were served with a subpœna to produce this paper yesterday? A. No, sir.

Q. Were you not served with a subpœna yesterday to produce the paper in court? A. To produce this [the poster] but there was nothing in it about the manuscript. That was this morning—after 12 o'clock.

Q. You went and saw the manuscript this morning? A. Yes, sir.

Q. Would there be any difficulty in getting the paper from you brother if you were to go to the office? A. No, sir, pro vided I would be protected in case of there being any difficulty arising. I do not know as there would be any resistance.

By Mr. MERRIMON:

Q. What is your brother's name? A. W. J. Edwards.

The CHIEF JUSTICE. The presiding officer is of the opinion that a case for an attachment and for contempt of court has not been made out against this witness. He says he has no more control over this paper than one of you, that he went to look at the paper out of curiosity, that his brother allowed him to examine it, and that he told his brother to put it back. If that be true he has no more right to send for the paper than any gentlemen in this court. The sheriff seems to be the man who ought to be put in contempt if he does not produce it when called for if the paper is in the office.

Examination resumed.

BY MR. MERRIMON.

Q. Is sheriff Lee here? A. I stated to you this morning that I did not think he was. I heard last night in a conversation that he was not in town.

Mr. BADGER. I think his deputy Mr. Ball is in charge of the office. He was sometime ago.

Q. Did you say your brother was in charge of the printing office? A. He works there.

Q. Is he the superintendent? A. Yes, sir, I presume he is. He works in the jobbing department, but Mr. Ball, as Mr. Badger states, has the office under charge.

Q. [By the Chief Justice.] Could your brother, without the betrayal of confidence, take any paper out of the office? A. The paper is among the private papers of the office for future reference.

By Mr. Graham.

Q. Who told you that you would be liable for trespass if you took the papers out? A. I do not think any one did, but I was under that impression. I consulted a friend about it. When jobs are printed the original copy is on file for future reference. It is the property of the office.

The CHIEF JUSTICE. I do not think you have a right to press the question.

Q. [By Mr. Merrimon.] You say that this poster was printed at the *Standard* office? A. I say this was.

Cross-examination waived.

Mr. MERRIMON. We have sent for the original manuscript of the proclamation, and we will now examine a witness from the state of Tennessee upon another point.

ISAAC E. REEVES, *a witness called on behalf of the managers, being duly sworn testifies.*

By Mr. Merrimon:

Q. Where do you reside? A. in the state of Tennessee, Washington county.

Q. What is your business? A. The law is my profession.

Q. State to the court whether or not you know a person in your state by the name of George W. Kirk, and if so state what you know about him? A. Yes sir, I have known him personally since the close of the war. I knew him during the war. I knew him during the war by reputation only.

Mr. BOYDEN. What do you propose to prove by this witness.

Mr. MERRIMON. We propose to prove that George W. Kirk resides in the state of Tennessee.

Q. State what you know about the domicile of George W. Kirk? A. He has been residing in the same town in which I reside—Jonesborough, for about two years I think. He resided in the county before that time, but he moved to Jonesborough about two years ago, I think.

Q. Has he a family? A. Yes sir, he has a family.

Q. State whether he resided there during last summer? A. Yes, sir, he resided there last summer. He left about the 29th or 30th of June, I think, with his family. He removed his family from Jonesborough about the 30th of June.

Q. To what point? A. I do not know to what point. I only understood that he moved his family into the country.

Q. In Tennessee? A. Yes, sir.

Q. He left the village and went into the country in the state of Tenoessee? A. Yes, sir.

Q. Do you remember whether he was absent from the state about that time and if so how long? A. I remember that he left Jonesborough for Washington City—so he reported—about the middle of June—I think the 10th or 15th—I don't remember the precise time. He and two or three others went to Washington City—so they reported.

Q. When did they return? A. They returned in the latter part of June and remained a day or two, I think. I remember Colonel Kirk was very busy making preparationss to move his family from the town. I saw them as they started.

Q. How long was he absent then? A. He was absent until some time in December, I think. I saw him get off the train and I spoke to him. He told me he had returned.

Q. He left there in June you say. To what point did he say he was going? A. He did not tell me where he was going.

Q. When he returned did he tell you where he had been? A. I had a conversation with him in reference to where he had been. I said to him, that he had got his name connected with the newspapers a good deal since he left, or I made some such

remark, and he laughingly remarked he had. I only talked to him five minutes after he got off the train.

Q. Where did he say he had been? A. He said he had been in North Carolina—I don't know that he said he had been in North Carolina, but that was what we were talking about, his being there. I don't remember what the statement was, whether he said he had been in North Carolina, but I know we mentioned his being over here.

Q. [By the Chief Justice.] That was the understanding? A. That was the undrstanding, that he had been in North Carolina. I forget his exact statement.

Q. Where has he resided since the time you have mentioned? A. I don't know the point.

Q. Is it in Tennessee? A. It is in Tennesse, and my impression is that he is in that county.

Q. In what county? A. Washington county. The same county that he resided in before he left there.

Q. Do you wish the court to understand you as saying that he has resided since 1868 in the county of Washington in the state of Tennessee? A. That is what I intended the court to understand.

Q. Do you know the reputation of George W. Kirk?

Mr. BOYDEN. I don't think that question is competent. For what purpose do you ask it?

Mr. MERRIMON. The articles charge that George W. Kirk is a violent and desperate man, and a man of notorious desperate and violent character, especially in the management of soldiers or armed persons, and we propose to prove the fact as alleged.

Mr. BOYDEN. I can't see how the evidence is admissable even if the facts are alleged. Suppose that Kirk were one of the parties charged here, could the managers prove his character? He is not offered here as a witness and unless he is, they cannot attack his character. I know of no other principle upon which a person's character can be attacked except he is offered as a witness, and certainly, there is no principle of law by which,

because the fact is alleged, the question of the character of a man who is not a witness can be gone into.

Mr. MERRIMON. It is on the general principle, Mr. Chief Justice, that whenever a material allegation is made in an indictment or in a declaration or in any other proceeding before a judicial tribunal, it is competent to introduce testimony which tends to support the allegation. Now what are the allegations here? One of the allegations, that runs through nearly all these articles of impeachment is that the respondent, the Governor of this state sent to the state of Tennessese and procured a notoriously desperate and violent man, George W. Kirk, to come here and perform the acts of violence and outrage which this respondent desired to accomplish. Then, sir, is not the character of Kirk for violence a material part of this allegation? Is not that allegation in reference to the character of Kirk put in the articles to show an aggravation of the offence of the respondent—to show the alleged purpose of the accused to stir up internal strife and civil war in the state of North Carolina? There is no more material part in the allegations in the several articles of impeachment than the one in which we charge the respondent with having procured this notorious and desperate character from the state of Tennessee to come here to take command of this armed organization. And proof of that is admissible upon strict legal principles.

But I wish to state another ground, at which I hinted the other day, and which I think is proper to be considered here. This court is not bound by all the rules of evidence that apply to a superior court upon a trial before a jury. You are an inquisitorial tribunal; every senator is a judge and is entitled to hear just such evidence as a judge would be entitled to hear in a proceeding for a bench warrant issued against A. B. for perpetrating some crime. Therefore, I say that, because it is an inquisitorial body and because the accused is not to be convicted of crime, as would be the case in a criminal trial before a superior court, the ordinary strictness of the rules of evidence do not apply but this court may enlarge those rules

to such an extent as to enable its members to put themselves in possession of additional evidence as a judge might do, if he were enquiring whether a crime had been committed.

But, sir, we do not need to rest our claim for the admissibility of this proof upon that doctrine. It is clear on the general principle that we have a right to introduce all evidence that tends to support the allegations contained in the articles.

Mr. BOYDEN. Mr. Chief Justice, I am not a little surprised at the doctrines which have been laid down by the learned counsel. He says that this is an inquisitorial tribunal. There never was a greater mistake. Sir, the inquisitorial tribunal is the House of Representatives. The members of that body act in place of the magistrate or the judge out of court. They hear the testimony and they do not act without testimony. They have no more right to proceed to prepare articles of impeachment without testimony, than a judge himself sitting in court would have to issue his warrant. As an inquisitorial body they hear testimony, solemnly made upon oath before them, and even if one of the inquisitors himself—a member of the house of representatives—were cognizant of a fact, that body could not act upon his statement except he made it under oath before them. This is no more an inquisitorial court, than the superior court is an inquisitorial court. This tribunal is governed, as we have the most abundant authority to show, by all the rules and analogies which govern in other courts. It has been stated that this court "is a law unto itself," and it has been said here that it can make just such rules as it pleases in respect to the character of the testimony to be admitted. In other words it is contended that this court can exclude just what it pleases and can admit just what it pleases. Sir, that is a fallacy. This, sir, is a high judicature in which you must be governed, as Mr. Charles Lee, the attorney general of the father of his country said, by the rules which will enable you to do justice, and by the analogies which govern in courts of law. Sir, what is to become of my client or of any man, situated as he is, if this is to become a mere

inquisitorial court? What is to be the fate of any ma against whom articles of impeachment have been preferred, i the court for the trial of impeachments is to inquire into any thing it pleases? No, Mr. Chief Justice, this is no suc court, and no such proof as is sought to be introduced is ad missible, certainly, until it is shown that the respondent kne that Col. Kirk had the character which is alleged.

Mr. BRAGG. Mr. Chief Justice and senators, it seems me that this is a very simple matter. This court is not sitti to try the chief executive officer of this state, upon an indi ment preferred against him. He is to be tried upon articles impeachment and for offences which are impeachable. What they? We have the law before us stating that the governor of t state may be impeached for "corruption or other miscond "in his official capacity," or for "any criminal matter, the c "viction whereof would tend to bring his office into public c "tempt." We all know—at least we who are lawyers are s posed to know—that when a defendant is on a trial before court of law, you cannot go into proof of his character unless l himself opens the question. The justice of that we all can se But here, one of the acts of official misconduct which w charged against this respondent is that he sent to the state Tennessee and procured a man of notoriously bad characte cruel and remorseless; and yet it is argued here that we are n to be allowed to show that fact as an element of proof to esta lish the misconduct of the respondent in office. Sir, the que tion is too plain to demand any extended argument.

The proposition, sir, is not like that presented by the gentl men on the other side of an attempt to go into a defendan character when he is on trial upon an indictment. Here th accused stands before this body charged in articles of impeach ment. He may be impeached for offences which constitut official misconduct, though the acts with which he is charge do not amount to an indictable offence. Nobody will disput that with the law before us. Therefore, we say that, upon the articles and upon the law, the matter is too plain to admit o

serious dispute that this is a part of the case against the accused that he sent to Tennessee and procured a man of desperate character and put him over certain troops to execute his unlawful purposes.

I submit, therefore, that the evidence is clearly competent to sustain the allegation.

Mr. SMITH. Mr. Chief Justice and senators, I suppose the accused would be guilty of no offence if he commissioned Kirk, unless the appointment were followed by acts in keeping with the reputation which they propose to establish. It seems to me to be rather reversing the order of proof to enquire into the character of a party to whom the commission was given. To lay a foundation for the charge at all, it would seem to be proper to show first, that, by virtue of that commission, acts of lawlessness and unwarrantable character were committed, then that the accused knew the character of the man he was to appoint, so that he could be justly charged with the acts of his agent whom he should commission. The fact of Kirk's previous lawless character, if such was his character, would not make a case out against the respondent at all; for though he possessed the character described, it may very well be that his conduct in this state has been irreproachable since the commission was awarded to him. What I mean to say is, that in advance of proving the bad character of Colonel Kirk, it must be shown that his character was within the knowledge of the executive when the commission was issued, and that then, after he was commissioned, he was guilty of acts not in keeping with the character of a commissioned officer. It seems to me that these facts should be proven before it is admissible to prove the character of Colonel Kirk in Tennessee. He is not on trial. If he were, proof of his character would not admissible in evidence to his prejudice, for he would have to be tried by his acts irrespective of the character which he bears; and still less is this respondent to be affected by the evidence of the character of an agent when it would not be competent to prove the character of the accused himself.

And in this connection, I desire to enter my dissent from the view taken on the other side in reference to the rules of evidence applicable to this trial. Whenever a court organized and sworn, departs from a just conception of duty, it is at sea, and instead of its being an instrument by which justice is vindicated, it may become a mere instrument of oppression in the hands of those who control it. I do not understand how the court can ignore the principles of evidence recognized in all courts with out hazarding the cause of justice itself. The constitution makes this senate a judicial body like the supreme court and its judges. It has all the attributes as well as the name of a judicial body. Senators are sworn to decide this cause as a judge would have to decide it if brought before him; and, sir, this court has no more right to admit improper evidence or to eject proper evidence than you have to try this respondent by your own notions of what should be done and not in accordance with the laws of the land.

This, sir, is a criminal proceeding. It is true a judgment of conviction would not be followed by the loss of the worldly goods of this respondent, but it would be followed by personal and official degradation and incapacity in the future to hold any office of honor or emolument within the state of North Carolina. The supreme court of the United States has held, since the war closed, in the case of *ex parte* Garland, that an act of congress imposing personal disabilities upon one of these officers, was an infringement of his vested rights, and that no legislative act could deprive him of rights which existed before it was passed. Nor can this general assembly, still less one branch of it, by a species of *ex post facto* law enacted and executed on the spur of the moment, deprive this accused of any of the rights he has and would have before any other body. This is essentially a criminal charge. The respondent is on trial for an official crime, which is to be followed by degradation if he is convicted, and he is here insisting upon the same rights which are accorded to any one else on trial before a legal tribunal.

I am aware that language like that used by the counsel was

used on the trial of Andrew Johnson and I remember, sir, with what a withering rebuke it was received by the eminent members of the senate and by the eminent counsel for the respondent in that case, and, sir, as an appropriate result, the proposition was never sustained by that body. I am sure that the senate of North Carolina is disposed in this case, (and their acts have shown it,) to give to this accused every right that belongs to any man on trial; and if this evidence would be incompetent and improper in a court of justice we insist that the rights of this respondent are not abridged by the nature of the tribunal before which he now appears. If this statement be correct, then we insist that, as the testimony offered here would not be competent upon the trial of the accused upon an indictment, it would not be admissible in this proceeding. Anything that ligitimately tends to establish the guilt of this respondent, we admit is competent evidence; but we do submit that it is no crime to issue a commission to a man as an officer, independent of some evidence of knowledge on the part of the respondent that would unfit the man for the appointment.

Senator GILMER moved to extend the session of the court this day for one half hour.

A sufficient number seconded the motion,

The CHIEF JUSTICE put the question on the motion of senator Gilmer, and it was decided in the affirmative.

Mr. GRAHAM. Mr. Chief Justice and Senators, I have but a few words to say in reply to my honorable friend who has just taken his seat. The discussion has assumed a very wide range on the other side, and one that I do not think is at all important to follow. The practical question before the senate is whether the evidence offered bears upon the issues raised between the impeaching body and the accused. The prosecution charges that the respondent was guilty of a great abuse of political power. It is not a question of the acts of the individual but the acts of the public officer. It is alleged that the governor, in order to effect an illegal purpose, made use of as his instruments these desperate men. It is distinctly charged

in the articles of impeachment, that these men were of a lav less character. The respondent denies these allegations in h answer, and upon that we have joined issue, and that is th question now.

Is not the fact sought to be proved an important element i the determination of that issue? If the respondent had em ployed a citizen of North Carolina, a man possessing weight o character, and recognized as a man just and pacific in his dis position, and indisposed to abuse power conferred on him, i would have been a circumstance greatly in his favor. But h having made use of men such as are described in thes articles of impeachment, it is a circumstance greatly agains him. The character of the agent employed and what he ha done in the past, is evidence bearing on the question of what h was expected to do, and is one of those matters which this cou ought to inquire into, if it intends to ascertain the facts in th case. It is therefore simply a question of whether the ave ment made in the articles shall be allowed to be proved as it averred. The object of pleading is to apprise an accused par of the character of the evidence expected to be given, and t enable him to come prepared, if he can, to contradict it; an if he does not contradict it, the proof on the part of the pros cution will stand. We shall expect to prove that this man w a desperate and lawless character, remarkable for his cruelty i the exercise of power, and possessing the attributes of what ordinarily called a "bushwhacker" in the vernacular of wa fare.

The CHIEF JUSTICE. The presiding officer is of th opinion that the evidence is competent and admissible, to b confined, however, to the character of the party, such as i would be likely to be heard of by the respondent when he sent to employ him. The court cannot go into the particular acts of his life.

ISAAC E. REEVES. (*Examination resumed.*)

By Mr. Merrimon.

Q. Do you know the general character of Kirk? A. Yo

sir, the general character and reputation he made during the recent war. I have known him personally since.

Q. What is that general character? A. He had the character there of being a desperate man—notorious.

By the Chief Justice.

Q. Explain what you meen by desperate. A. Merciless.

Q. Criminal? A. Criminal—that is while he was a military officer, I am speaking of.

By Mr. Merrimon, (*resuming.*)

Q. Was he a violent man? A. Yes, sir, he had that reputation?

Q. You say that his reputation was notorious? A. Yes, sir.

Q. State whether you knew a person of the name of B. G. Burgen, and if so, state what you knew of him? A. I know him. He came first to Jonesborough sometime during the winter of 1869 and 1870. I do not know whether it was December or January. He came there as an attorney and was admitted to the bar as a practicing attorney. He brought his family with him. He made no investment there in real estate but he lived in the town of Jonesborough, and claimed that as his home and said he intended to make it his future home. He remained there until June sometime, and left leaving his family. He left about the middle of June and was absent several days and returned and remained a day or two and then he left again and was absent until December. He returned in December sometime and removed his family from Jonesborough. I do not know where he now is.

Q. He is not there now? A. No, sir.

Q. State whether you knew a person by the name of Yates? A. Yes, sir, I know him.

Q. H. C. Yates? A. H. C. Yates. He is known as Clay Yates.

Q. State what you know of him, where he resides, his age, and any thing you know about him in that respect? A. I do not know exactly his age, but I suppose he is about 22 years old. He is a voter—I remember he was a voter last summer.

In may, I think it was, he announced himself as a candidate to represent the county in the legislature.

Q. What county? A. Washington county. He withdrew, however, as a candidate before the election. That is the way I suppose him to be of age. He has a rather boyish appearance.

Q. What county did he reside in? A. He resided in Washington county.

Q. Do you know him personally? A. Yes, sir, I know him personally.

Q. State whether you know another Kirk called S. S. Kirk? A. I know him when I see him. I remember of seeing him only twice. I had a conversation with him in July—about the 10th of July, and in that conversation he told me he was going around to his brother's command in North Carolina.

Q. Where does he reside? A. I do not know his place of residence, but I have always understood that he was living in the county.

Q. Washington county? A. Yes, sir, the same county

Q. Have you often seen him there? A. No, sir; I do not remember of seeing him more than twice.

Cross examination.

By Mr. BOYDEN.

Q. How long have you known George W. Kirk? A. I have known him four or five years.

Q. You did not know him before the war? A. Not personally.

Q. Did you know his character before the war? A. No, sir. I did not know his general character before.

Q. This character which you give him is a character that he acquired during the rebellion? A. During the rebellion—or war.

Q. You know nothing about him except what occurred in his conduct during the war? A. Well, I don't know that I could answer that affirmatively. I have heard of some—

Q. I speak of his general character. A. No, sir.

Q. I ask you if he was a United States officer? A. Yes, sir. I understood that he was colonel of a regiment in the federal service.

Q. When you speak of this man being desperate and remorseless you mean with reference to the character he acquired during the war? A. Yes, sir; during the war. Since the war I do not know of any outrageous acts at all. His behavior, as far as I have seen, has been that of a comparatively quiet citizen except —

Q. A quiet citizen? A. Except a few months when he was in the militia service. He made some reputation during that time for cruelty.

Q. There were very difficult times over there? A. Yes, sir, rather turbulent times.

Q. All you heard of him in respect to his character referred to when he was in the service. A. Yes, sir; when he was in the service.

Redirect examination

By Mr. Merrimon.

Q. You say that he was in the militia service after the war? A. Yes, sir.

Q. What was this reputation as a militia officer there? A. It accorded very well with his reputation during the war while he was in the federal service, except that I do not know of murders perpetrated. I know he was a terror of the people of Middle Tennessee. I mingled with them a good deal there while he was in the service.

Senator MOORE. Mr. Chief Justice, I send to you a question in writing which I desire to be propounded to the witness. I merely state in explanation of it, that I desire to know whether when Kirk came to North Carolina in June 1870, as testified to by the witness, the witness knew of his own knowledge that it was or was not his intention to make this state his residence.

Mr. GRAHAM. We object to the question. Kirk is not to judge of his own intentions. He can not decide that ques-

tion for that is, in effect, allowing him to prove that his residence was changed.

The CHIEF JUSTICE. I have not yet read the question. The clerk will read it.

The CLERK read the question in the words following:

Q. Do you know of your own knowledge whether George W. Kirk moved his residence to North Carolina in June, 1870, or not?

The CHIEF JUSTICE. Anything that Colonel Kirk told the witness when he left would be a part of the *res gestæ*.

SENATOR MOORE. I desire to say, Mr. Chief Justice, that I ask this question, having understood by this investigation that it is designed to prove whether Kirk was a citizen of Tennessee.

Senator GRAHAM of Orange. Mr. Chief Justice I object to debate on the part of senators.

Senator MOORE. I am not debating the question. I was stating the object of my inquiry.

Mr. GRAHAM. The question is a little different as read from what it was stated by the senator verbably. I understand the question to be confined to whether he knows of Kirk's having removed his residence, To that I think there is no objection.

The CHIEF JUSTICE [to the witness]. The question is whether you heard Colonel Kirk say when—

Mr. GRAHAM. We would prefer to have the Chief Justice read the question to the witness, as it calls for the witness' knowledge of whether Kirk moved.

The CLERK again read the question to the witness.

Q. Do you know of your own knowledge whether George W. Kirk moved his residence to North Carolina in June, 1870, or not? A. No, sir, I don't know of his moving it. I said in my testimony before when the question was asked me, that I understood he had moved his family into the country. I think they are yet a few miles from Jonesborough.

Q. [By Mr. SPARROW.] A few miles from Jonesborough

in Tennessee? A. A few miles from Jonesborough in the country. I never heard him express any intention of moving to North Carolina or of changing his residence.

By Mr. GRAHAM.

Q. He had a family? A. Yes, sir.

Q. That family never came to North Carolina that you understood? A. No sir, not that I heard of. I understood that he moved them a few miles into the country.

WILLIAM M. COCKE, *a witness called on behalf of the managers, being duly sworn testified as follows:*

By Mr. MERRIMON.

Q. Where do you reside? A. I reside in Asheville in this State.

Q. What is your profession? A. I am a lawyer by profession.

Q. State whether you know by reputation or otherwise a person called George W. Kirk? A. I know him by reputation. I have seen him two or three times, but I have no personal acquaintance with him. I know his reputation in Western North Carolina.

Q. What is it? A. I suppose I could not better describe it than it was described by the witness who preceded me. He has the reputation there of being a cruel, merciless man—I think more than that—his reputation in Western North Carolina during the war, as I understand it, was more that of a plunderer in his operations. I am not permitted to speak of instances?

The CHIEF JUSTICE. No.

Q. I understand you to say that he was a violent, desperate and cruel man, and had the reputation of a plunderer? A. That is his reputation in Western North Carolina.

Cross-examination.

By MR BOYDEN:

Q. Did you know anything of his character before the war? A. I was not acquainted with him and never knew him before

the war. I have heard something in regard to him before the war.

Q. Speak generally? A. I have only heard special facts.

Q. You don't know his general reputation before the war? A. I can't say that I have heard enough said of his character before the war to speak of it. I have heard instances that I could speak of.

Q. I ask you if there was not during the rebellion a great deal of violence on both sides in that part of the country? A. That is my understanding. I did not live in that part of country during the war. I resided in Tennessee a part of the time. Perhaps 12 months before the close of the war—about that time—I removed to the county south—Cleveland county. In October, 1869, I removed to Asheville, and I have lived there ever since. I understand that acts of violence were perpetrated on both sides in that region.

Q. Retaliating upon each other? A. I understand so.

WILLIAM M. MURDOCK, *a witness called on behalf of the managers, being duly sworn testified as follows:*

By Mr. MERRIMON.

Q. Where do you reside? A. Raleigh, North Carolina.

Q. What is your business? A. I am an insurance agent.

Q. State whether, at any time, you knew a person called George W. Kirk, and if you knew him, state where he resided.—A. I knew him in East Tennessee in 1867 and 1868.

Q. Did he reside there? A. Yes, sir.

Q. Where? A. East Tennessee.

Q. Do you know his reputation? A. I know his general reputation.

Q. That is exactly what we want. What was it? A. He was a man of very violent character. During the war he committed a great many outrages.

Mr. BOYDEN. You will speak of his character generally, and not acts.

Q. What would you say his character was? A. Very bad.

Q. Describe in what respect? A. In the commission of deeds—outrageous deeds and murders.

Mr. BOYDEN. You are not at liberty to speak of offenses.

Q. What is his character for cruelty or humanity or inhumanity? A. That he was very cruel.

Q. State whether you know his reputation in Western North Carolina as well as Tennessee? A. He had that reputation in Tennessee and North Carolina.

Cross Examination.

By Mr. Boyden.

Q. Have you lived in Western North Carolina? A. I have.

Q. When did you live there? A. I lived there during the war.

Q. The whole time? A. No, sir, I was in the army in the western portion of the United States, during a portion of the war—the early part.

Q. What side were you on? A. The confederate side.

Q. There was a good deal of fighting—one side against the other in that country—western North Carolina—between the two parties? A. There was none except by those who had been in the federal army coming in there and capturing some of the confederate troops.

Q. And the confederate troops captured the federals, did they not? A. There were no federal troops in there except "bushwhackers" until the latter part of the war.

Q. The confederate side called them "bushwhackers"? A. I think the federals did too.

Q. Do you know that? A. I only know what I have heard since the war.

Q. Do you say that both sides did not retaliate upon one another?—were there not a great many union men who did not go into the war—who did not approve of the war? A. Yes, sir.

Q. Were there not conflicts between the two sides—was not that the reputation of the country there? A. Yes, sir, I believe it was.

Q. And there were very considerable cruelties practised on both sides? A. I have no doubt there were.

WILLIAM J. EDWARDS, *a witness called on behalf of the managers, being duly sworn testified as follows:*

By Mr. MERRIMON, S. C.

Q. Where do you reside and what is your business? A. I reside in the eastern ward of this city and am a printer by trade.

Q. What are you in charge of, if anything. A. I have charge of the *Standard* job office at present.

Q. Look upon the paper now produced [manuscript] and say whether you have seen it before? A. Yes, sir, I have seen it before.

Q. Where did it come from? A. It was brought to the *Standard* office in April—I would not be certain about the date—by Colonel Kirk to be printed.

Q. Do you know the handwriting of Governor Holden? A. Yes, sir.

Q. Look upon the paper and say if that is not his handwriting? A. Yes, sir, that is it.

Q. Look on the poster and say if you recollect where it was printed? A. I think it was done in the *Standard* office; I was not in charge of the office at the time it was done; my brother was there at the time.

Q. Do you know the print? A. I think that is the print.

Q. Is that poster a copy of the paper which you previously produced and hold in your hand? A. I think it is; it is signed the same, and has the same heading on it—the same title.

Cross examination waived.

Mr. MERRIMON. We now propose to put the poster in evidence.

The CLERK proceeded to read the poster in the following words:

RALLY UNION MEN
IN DEFENCE OF YOUR STATE!

RALLY SOLDIERS OF THE OLD
N. CAROLINA, 2D AND 3D FEDERAL TROOPS!

RALLY TO THE STANDARD OF YOUR OLD COMMANDER!

Your old commander has been commissioned to raise at once a regiment of state troops, to aid in enforcing the laws, and in putting down disloyal midnight assassins.

The blood of your murdered countrymen, inhumanly butchered for opinion's sake, cries from the ground for vengeance.

The horrible murders and other atrocities committed by rebel K. K. K. and "southern chivalry," on grayhaired men and helpless women, call in thunder tones on all loyal men to rally in defence of their state. The uplifted hand of justice

N. CAROLINA 2D AND 3D FEDERAL TROOPS!

must overtake these outlaws.

1000 RECRUITS

are wanted immediately, to serve six months unless sooner discharged. These troops will receive the same pay, clothing and rations as United States regulars. Recruits will be received at Asheville, Marshall and Burnsville, North Carolina.

For further information address or call on me at Asheville, N. C.

GEORGE W. KIRK,
Colonel 2d Regiment State Troops.

Mr. MERRIMON. We now propose to have the manuscript read.

The CLERK proceeded to read the manuscript produced by the witness, which was in the same words as the poster with the addition in pencil at the close of the words "500 hand bills, print at once."

Mr. MERRIMON. I ask leave of the court, that the witness last sworn may be allowed to withdraw the original

manuscript of this proclamation and leave a verbatim copy with the clerk.

The CHIEF JUSTICE. Leave will be granted.

Senator GRAHAM, of Orange, moved that the time of the session be extended for fifteen minutes.

The CHIEF JUSTICE put the question on the motion of Senator Graham and it was decided in the affirmative.

WILLIAM W. COCKE, *a witness on behalf of the managers, being recalled, testified as follows:*

By Mr. MERRIMON.

Q. Look upon this poster and see if you ever saw one like it in the mountains and if so, where and under what circumstances? A I have heard the poster read and I have seen them at Asheville—I think during last summer.

Q. You saw them up? Yes, sir.

Cross-examination waived.

Mr. MERRIMON. We will now call Mr. Johnson, one of the managers.

THOMAS D. JOHNSON, *a witness called on behalf of the managers, being duly sworn, testified as follows:*

By Mr. MERRIMON.

Q. State whether you have seen a paper like this poster in the mountains and if so, under what circumstances? A. I had a copy of this or very much like it—I know it is a copy of it. I used it last summer in the campaign. I think I saw more than one copy—I do not know how many.

Q. Where did you find it? I saw one copy in the post office at Asheville lying upon the counter, and I wanted to get it and it was refused. I then got a friend of mine to go down and pretend he was a good union man and he got one. We were to have a meeting the next day, and I got the copy to use in making a speech and carried it with me.

On motion of Senator ROBBINS, of Rowan, the court adjourned to meet on Monday at 11 o'clock.

NINTH DAY.

SENATE CHAMBER, Feb. 6, 1871.

The court met at 12 o'clock, pursuant to adjournment, Honorable Richmond M. Pearson, Chief Justice of the Supreme Court, in the chair.

The proceedings were opened by proclamation made in due form by the doorkeeper.

Senator GRAHAM, of Alamance, moved to dispense with the reading of the journal of the proceedings of Saturday.

The CHIEF JUSTICE put the question on the motion of Senator Graham, and it was decided in the affirmative.

Mr. BOYDEN. Before the trial is proceeded with we desire to ask Mr. Reeves and Mr. Cocke a few questions.

ISAAC E. REEVES, *a witness for the managers, being recalled, testified as follows:*

Cross-examination.

By Mr. BOYDEN.

Q. You speak of the state of feeling in the mountain region between the different parties, one retaliating upon the other. To which party did you belong? A. I was in the confederate army.

Q. You were a confederate? A. Yes, sir.

By Mr. GRAHAM.

Q. You were not in service at that place—the scene of Kirk's operations? A. No, sir, I was in the western army, and was not there except at times on leave.

Q. You were under Gen. Bragg, who commanded in the southwest? A. Yes, sir.

WILLIAM M. COCKE, *a witness for the managers, being recalled, testified as follows:*

Cross-examination.

By Mr. BOYDEN.

Q. We wish to know what side you took in the rebellion, whether in favor of the United States or against them? A. I was a Unionist up to the time of Mr. Lincoln's proclamation in April, 1861. When the conflict was inaugurated I took side with my own section.

Q. You were a confederate during the war? A. I was not a member of the army.

Q. You were very decided in that direction after the proclamation? A. Yes, sir, and so continued until the close of the war.

Q. Was that the reason why you left Tennessee and came out of the Military [illegible]? A. The reason I left Tennessee was [illegible]

Q. I don't care about the objects. A. I prefer to give [illegible] give them. [illegible] remained at home after [illegible] I remained home six month after [illegible] Tennessee [illegible] understood from [illegible] anything I [illegible] [illegible] some [illegible] [illegible] [illegible]

cases that were tried before you at chambers should be printed. We have examined a certified copy of the record which was left here by the clerk and have separated from it those portions which we desire to have printed—the cases of Abraham G. Moore and John Kerr—which we propose to submit to the other side and then, if they agree, to transmit the manuscript to the printers and let the matter be printed in the appendix the same as other papers are to be.

Mr. BOYDEN. We ask for brief time to look over the papers and if there is anything we want other than what the counsel propose to have printed we will inform you.

Mr. GRAHAM. Mr. Chief Justice and seniors, we beg leave to offer in evidence certified copies of the records of the superior court of Alamance county, showing that the courts of justice were regularly held in the fall term of 1869 and the spring term of 1870, inclusive, prior to the inception of the county by the armed forces of E. C.

The CLERK read the papers presented in the following words:

STATE OF NORTH CAROLINA, } Superior court, Fall Term, 1869.
Alamance County. }

It appeared that the superior court, begun and held on the 4th day of September, 1869, for said county, on the fifth Monday after the 1st Monday in September, being the 6th day of December, 1869, His Honor, A. W. Dennis, judge presiding, the Hon. J. R. Paul, Esq., solicitor, appearing in behalf of the state, the following proceedings took place:

Wm. Albert Murray, Esq., sheriff of said county, reported he had summoned the following good and lawful men as jurors for the first week of the term, viz:

Michael D. Sheffner, Felix G. Crutchfield, Alex. Summers, Alfred Newitt, Wm. Trocker, Reuben P. Mitchell, Wm. Foust, Price Carter, Martin Sheffner, Johnson Turner, Milton Loy, Robert B. Stubblefield, G. V. Thompson, George W. Dowdy, Martin V. Boon, Wm. S. Tate, Alfred Sharp, Wm. S. Walker,

E. A. Foster, John W. Duke, Joseph Chisman, Joel Tickle, Michael Albright, Oliver McPherson, James T. Barber, James Hunter, John Foust, Wm. A. Thompson, Stephen White, W. C. Dunnell, Joseph W. Holmes, Jacob Michael, Peter Foust, J. H. Foster, Marion Hessee, M. J. Hughes.

And of the said good and lawful men the following were drawn, sworn, and charged as grand jurors for the term, viz:

Alfred Newlin, W. S. Tate, Felix G. Crutchfield, Johnson Turner, Jacob Michael, John W. Duke, J. H. Foster, Peter Foust, M. J. Hughes, Marion Hessee, Stephen White, Jas. T. Barber, Joseph Chrisman, Wm. S. Walker, Michael Albright, George W. Dowdy, Alfred Sharp, Martin V. Boon, Felix G. Crutchfield is appointed foreman of the grand jury.

Green Andrews is appointed and sworn as an officer to wait upon the grand jury.

And the following good and lawful men were sworn as a petit jury for the first week of the term, viz:

W. A. Thompson, Joseph N. Holmes, Martin Shoffner, Robert B. Stubblefield, Joel Tickle, C. O. Thompson, Oliver McPherson, James Hunter, Ruffin P. Mitchell, Alex. Summers, Wm. Troxler, Michael D. Shoffner, Milton Loy, John Foust, F. A. Foster, Wm. Foust.

W. C. Donnell, Juror, excused for the term.

* * * * * *

I, W. A. Albright, clerk of the superior court of Alamance county and state aforesaid, do certify that the foregoing is a true and perfect transcript of and from the minute docket, as appears of record at fall term, 1869.

I further certify that said court, as organized above, was open from day to day for the transaction of business up to and including the 16th day of December, A. D. 1869.

In testimony whereof I have hereunto set my hand, and affixed the seal of said court, this 6th day of Feb'y, A. D., 1871.

W. A. Albright, Clerk.

STATE OF NORTH CAROLINA, } Sup'r Court, Spring Term, 1870.
Alamance County. }

Be it remembered that at a superior court, begun and held for the County of Alamance, at the court-house in Graham on the 14th Monday after the 1st Monday in March, 1870, it being the 13th day of June, 1870, his honor A. W. Tourgee Judge, present and presiding, and the Hon'l J. R. Bulla, State Solicitor, appears on the part of the State. The following proceedings were had.

When Albert Murray, sheriff of said county returned that he had summoned the following good and lawful men as jurors for the first week of the term, viz:

Joshua Whitsell, J. G. Moore, Peter Garrison, Orias Pike, Jesse Rippey, Dan'l Tickle, Levi Tenett, Thomas Murray, D. W. Kerr, Joseph W. Thompson, John A. McCauley, Abram Boyd, Peter Ruffin, D. W. M. Huffman, James M. Thompson, Benj. White, Levi Fossett, H. M. Quackendush, Solomon Tickle, Hiram Wills, Bennett Hazell, Joseph Wyatt, Thomas P. Smith, Enoch Yackery, George C. Pickard, David Black, Wm. McPherson, Wm. S. Morrill, Joseph Barber, Peter Summers, Wm. Mahan, Wm. M. Roscoe, Charles Patterson, Constantine Sellers, John A. Bryant and Wm. Lewis.

And of the said good and lawful men the following are drawn, sworn and charged as grand jurors for the term, viz:

Abram Boyd, Wm. M. Roscoe, Wm. Lewis, John A. Bryant, Constantine Sellers, Joseph Barber, H. M. Quackenbush, Levi Faucett, Wm. Mahan, Peter Ruffin, Peter Summers, D. W. M. Huffman, Charles Patterson, Wm. McPherson, David Black, James G. Moore and Hiram Wills.

James G. Moore is appointed foreman of the grand jury.

Greene Andrews is appointed and sworn as an officer to wait upon the grand jury.

And the following good and lawful men are sworn as petit jurors for the first week of the term, viz:

Peter Garrison, Dan'l Tickle, Thomas Murray, Nias Pike, Solomon Tickle, Thos. P. Smith, John A. McCauley, Jesse

Rippey, Wm. P. Morrill, Levi Faucett, Joseph W. Thompson, Benj. White, Joseph Wyatt, James M. Thompson, D. W. Kerr and Joshua Whitsell.

Bennett Hazel excused by the court.

* * * * * *

I, W. A. Albright, clerk of the superior court of Alamance county, and state aforesaid, do certify that the foregoing is a true and perfect transcript from the minute docket as appears of record at spring term, A. D. 1870. I further certify that said court as organized above, was open from day to day for the transaction of business, up to and including the 16th of June, A. D. 1870.

In testimony whereof, I have hereunto set my hand, and affixed the seal of said county, this 6th day of February, 1871.

W. A. ALBRIGHT, Clerk.

Mr. GRAHAM. We offer similar transcripts of the proceedings of the court in Caswell county.

The CLERK proceeded to read the papers offered in the words following.

MINUTE DOCKET, SUPERIOR COURT, FALL TERM 1869.

STATE OF NORTH CAROLINA,
Caswell County.

Be it remembered, that at superior court begun and held for the county of Caswell at the court house in Yanceyville on the fourth Monday after the first Monday in September, 1869. His honor A. W. Tourgee, judge 7th judicial district not having arrived by four o'clock P. M. to open said court, J. C. Griffith, sheriff of said county adjourned said court until Tuesday morning 5th October at ten o'clock.

TUESDAY MORNING, October 5th, 1869.

Court met according to adjournment and was opened by his honor A. W. Tourgee, judge presiding. J. R. Bulla, solicitor 7th judicial district appears and prosecutes in behalf of the state.

J. C. Griffith, sheriff of said county, returns the following list of jurors by him summoned to serve for the first week of

said term: Livingston H. E. Hodges, Wm. R. [illegible] R. Cooper, E. B. Holden, L. L. [illegible] B. F. Thompson, Nath'l Coolidge [illegible] Sledge, John W. Slade, C. M. Hoe [illegible] R. M. [illegible] Geslin, George A. Smith, Alex. [illegible] L. T. Rose [illegible] Gaston, A. S. Williamson, Thos. [illegible] James McLean, Henry Burton, W. [illegible] W. T. Sherrill, Joseph Moore, [illegible] Pence, J. G. [illegible] W. [illegible] Tally, W. E. [illegible]

[illegible]

T. A. Wilson, [illegible] G. Warren Anderson, P. Ore, [illegible] F. Sanders, [illegible] Hoke, [illegible] Tate, [illegible] W. [illegible]

[illegible] Nath'l Coolidge [illegible] W. Pegram, Jr.

[illegible]

[illegible] Collins, John W. [illegible] Williams, [illegible] Moore [illegible] Rogers, [illegible]

[illegible] his trial.

[illegible] his trial.

The following is the original panel as the first week of the term, to wit:

[illegible] Chambers, [illegible] A. Smith, [illegible] Tally, H. E. Hodges, [illegible] Moore, E. P. Hines, Saml. S. Harris, [illegible] B. F. Thompson.

STATE OF NORTH CAROLINA, }
Caswell County. }

I, F. H. Brandon, Clerk of the Superior court of Caswell county aforesaid, do certify that the foregoing is a true and perfect transcript from my docket, of the organization of the fall term of the superior court of the county aforesaid, as the same remains on record, and I farther certify that the said court continued in the regular discharge of its duties until Wednesday evening October 13th, 1869, when having disposed of the business of the term, the court adjourned, all of which is shown by my record.

In testimony whereof, I hereunto set my hand and the seal of said court, the 4th day of February, 1871.

H. F. BRANDON, C. S. C.

Minute docket to spring term, 1870

STATE OF NORTH CAROLINA, }
Caswell county. }

Be it remembered that on the 4th Monday after the first Monday in March, 1870, a superior court was begun and held for the county of Caswell, at the court house in Yanceyville, Hon. A. W. Tourgee, judge 7th judicial district presiding, J. R. Bulla, solicitor of said district, prosecuting in behalf of the state, his honor not being present to open and hold court the sheriff adjourned court until to-morrow morning at ten o'clock.

TUESDAY MORNING, April 5th, 1870.

Court met according to adjournment. Present his honor A. W. Tourgee, judge presiding.

The following named persons were drawn and sworn to serve as grand jurors to this term, to wit: James G. Drury, Greensby Carter, Rufus Stamps, John G. Wilson, John E. Robertson, W. T. Hodges, George W. Price, A. S. Badgett, R. B. Thornton, George S. Fitch, G. I. Farish, W. H. Stainback, R. A. Blackwell, C. D. Vernon, Abner Walker, Samuel I. Covington, E. J. Orr, Sidney L. Stephens.

Wm. Irvin and John Worsham are excused from serving as grand jurors to this term.

George W. Price is appointed and sworn foreman of the grand jury for this term.

The following is a list of the petty jury for the first week of the term, to-wit: Jas. T. Mitchell, James M. Rollins, Ibzan Rice, W. Thacker, C. C. Gatewood, W. J. Aldride, Warren M. Miles, Daniel Y. Tally, W. O. Gillespie, W. H. Johnston, Samuel B. Holden, R. M. Gwyn, L. P. Hatchwell, R. D. Stadler, Thos. L. Lea.

T. N. Jordan is appointed to wait and attend on the grand jury for this term.

STATE OF NORTH CAROLINA, }
Caswell County }

I, H. F. Brandom, clerk of the superior court of the county aforesaid, do certify that the foregoing is a true transcript from the minute docket of the superior court of said county, at spring term, 1870, and I further certify that the said court continued in the discharge of the business of the term until Wednesday evening, April 13th, 1870, when having disposed of the business of said term, adjourned, as shown by said docket.

In testimony whereof I hereunto set my hand and affix the seal of said court the 4th day of February, 1871.

H. F. BRANDON, C. S. C.

STATE OF NORTH CAROLINA, }
Caswell County. }

Be it remembered that on the 4th Monday after the 1st Monday in September, 1870, (it being the 3d day of October, 1870,) a regular term of the superior court was begun and held for the county of Caswell at the court house in Yanceyville, Honorable A. W. Tourgee, judge of the 7th judicial district of North Carolina, presiding, J. R. Bulla, solicitor, appeared and prosecuted for the state.

The following named persons were drawn to serve as grand jurors for this term, to-wit: T. L. Evans, W. S. Yarborough, Philemon Simpson, Yewell F. Hodges, James R. Aldridge, R. P. Wilson, W. S. Bryant, M. A. Turner, Thomas C. Teal,

Daniel Ganison, E. Slade, P. H. Williamson, W. M. Wat
W. B. James, Sterling Gunn, J. G. Fullington, W. B. Sta
W. B. Wynn.

W. B. Wynn is appointed foreman of the grand ju
this term.

T. N. Jordan is sworn to wait and attend on the grand
to this term.

The following named persons were called and sworn as
original panel, to-wit: Geo. G. Richardson, L. M. John
Jo'n B. Blackwell, W. S. Hatchell, Thomas J. Stubble
Stephen Underwood, John W. Allen, James O. Peterson
T. Anderson, H. W. Cobb, J. L. Fowler, W. H. Smith.

Thomas J. Mills, B. Hanchon, James M. Smith and J
Walters, excused from serving as jurors to this term.

Court adjourned to meet tomorrow morning at 9 o'clock

State of North Carolina,
Caswell county.

I, H. F. Bradsher, clerk of the superior court of Ca
county aforesaid, do certify that the foregoing is a true t
script from the minute docket of said superior court of
county aforesaid at fall term, 1870; and I further certify,
the said court continued in the office of its clerks
Thursday evening, October 6th, 1870, after having disp
of its regular business, adjourned, which I show by the
In testimony whereof, I have hereunto signed and affix
seal of said court, the 6th day of February, 1871.

H. F. Bradsher, C. S.

WILLIAM J. MURRAY, *a witness called on behalf of the managers, being duly sworn, testified as follows:*

By Mr. Graham.

Q. Do you reside in the county of Alamance? A. I do

Q. Do you hold any office there? A. I act as de
sheriff.

Q. Have you been high sheriff of the county? A. I hav

Q. During what years for how many years? A. I was elected in 1869 I think; from that time up to 1868 I believe.

Q. You are well acquainted in the county? A. Yes, sir.

Q. State whether you have transacted the principal business of the sheriff's office during the last two years since you have been deputy. A. I have done a good portion of it.

Q. State whether or not you have collected the taxes? A. I have.

Q. Served processes in various ways? A. Yes, sir.

Q. Been extensively through the county in the execution of these duties? A. I have been all over the county.

Q. During 1869 and 1870? A. Yes, sir.

Q. State whether or not there was any relaxation of the registration of deeds were as usual during those years? A. I think so, all of the time.

Q. County supplied with magistrates in the various townships? A. Yes, sir.

Q. Magistrate courts held in different parts of the county to your knowledge during the period since the township system has been in operation? A. Yes, sir.

Q. Were there constables in these townships? A. Yes, sir, constables in all the townships, I think, so.

Q. State whether or not to your knowledge there has been any resistance to the law in the execution of any process or in the execution of any duty of any officer in the county of Alamance during the period of your service? A. Not at all to my knowledge.

Q. Did you find it necessary to summon assistance to make the arrest of any body? A. I never did in my life all the time.

Q. In the execution of the duties of sheriff which you held and since you have been deputy you have never found it necessary to summon a posse to aid you in making arrests? A. I don't think I summoned any body to help me in any arrest during the whole time that I was sheriff of the county.

Q. Superior courts were regularly held at these terms, were they not? A. Yes, sir.

Q. The June term, 1870, according to the clerk's records, seems to have begun on the 13th of the month. Was that term held? A. Yes, sir.

Q. The Fall term was held also, was it, sir? A. Yes, sir, I think so.

Q. And the term preceding, in 1869? A. Yes, sir

Q. I understand you to say that you never knew of any resistance to the execution of any process, or to the execution of any law in the county? A. I never did, sir.

Q. You say you have no knowledge of any resistance occurring to any of them? A. I never heard of an officer being resisted in serving a legal precept.

Q. Are you acquainted with the officers of the county generally? A. I am.

Q. The constables and magistrates and officers of the county—you know them all? A. I do.

Q. You have no knowledge of there being any resistance to them? A. I have no knowledge of any resistance to serving any precept in the county.

Q. [By the CHIEF JUSTICE.] You do not believe there were? A. I do not.

Q. You don't believe that there has been any resistance to any one whatever? A. No, sir.

Q. Do you know when Kirk arrived there in command of troops? A. I think it was in June, I am not positive as to dates,—June or July.

Q. Had there been troops there before the arrival of Kirk's troops? A. There had been federal troops.

Q. What time did they come? A. I think they came there the latter part of February or the 1st of March.

Q. 1870? A. 1870.

Q. Company of federal troops? A. Yes, sir; I understood it to be a company; there were a good many men. I don't know whether they were a full company er not.

Q. What number of men would you suppose there were in the command? A. I suppose, sir, not knowing exactly, fifty or sixty; it may be more or it may be not quite so many. I don't remember the number.

Q. Those federal troops you say, arrived the latter part of February or early in March. Did those troops or other federal troops continue there from that time onword? A. I think they were there, with some interval—one company would go, and another would come. There may have been a few days they were not there.

Q. The garrison was kept up with the slight intervals you have mentioned from their arrival in February or March down to what period? A. I don't remember when the last troops left there.

Q. Since Kirk's troops were discharged? A. Yes, sir.

Q. They were there during the whole time Kirk was there? A. Yes, sir.

Q. The federal troops came there four or five months earlier? A. Yes, sir, I think they were there in March.

Q. Where were they quartered or stationed? A. They were quartered at the court house in Graham.

Q. And continued there from February or March down until after Kirk left the place? A. Yes, sir.

Q. Did you ever have occasion to call upon those federal troops for aid in the execution of your duties? A. I did not.

Q. They were there when Kirk arrived? A. Yes, sir.

Q. And continued during his whole stay? A. Yes, sir.

Cross examination.

By Mr. Boyden.

Q. I understood you that you have been the principal sheriff. From what time? A. I was elected in 1860.

Q. And continued principal sheriff until when? A. I think it was in 1868.

Q. What time in 1868 did you cease to be sheriff? A. August, 1868, I reckon, or September. The election came off in August.

Q. When did you qualify? A. I did not qualify.

Q. I mean when you gave up your office. A. In Sep

Q. Since that you have done the principal business of A. I have done a good portion of it.

Q. A large portion? A. Yes, sir.

Q. We will now come to the court which you say v in June 1860. I think you said it was held in June? sir, I think so.

Q. Was that before or after Kirk came there; the co It was before.

Q. The court was held before Kirk came there? A. so, sir.

Q. But at that time there were federal troops the Yes, sir.

Q. How long did the court sit? A. I don't know th answer that question intelligibly, sir. I think it sat of the first week. I think until Friday. I am not cert the time it adjourned.

Q. It adjourned the first week. But what day you co but think it was Friday? A. I think it was Friday - I positive about that.

Q. What day did the term commence? A. I think menced on Monday.

Q. Did the judge get there Monday? A. It strike did. There was one term he did not get there Mon whether it was the term I am not positive.

Q. We will now come to the fall term of 1870. W did the judge arrive at that time? A. I cannot spe tively as to that, whether it was that term or not. think he ever missed being there on Monday but on I do not know which court that was.

Q. How long did the court continue open at the t after the judge came? A. I cannot speak positive that I think about four days.

Q. You think about four days, but you cannot say p as to that? A. No, sir.

Q. Was there much business on the docket? A. Yes, sir, a right smart civil docket. I do not think the state docket was very large.

Q. Do you recollect whether the business was all gone through with at that fall term? A. I think it was all ended over and those that were ready were tried, some were not ready.

Q. You say the state docket was very small? A. I do not think that it was very large.

Q. I understood you to say it was small. Was that your answer? A. I do not think the state docket was a large one.

Q. I understood you to say it was small; is that your answer? A. Yes, sir.

Q. What part of the county do you reside in? A. About four miles from the court house.

Q. You resided about four miles from the court house. Were you often in Graham, the county seat? A. Yes, sir.

Q. Nearly every day? A. I was there as much as twice a week, sometimes every day.

Q. Were you there when Holden was hanged there? A. I did know. I suppose I was in Graham a part of the time. I do not remember exactly.

Q. Did you see Holden hanged? A. I did not, sir.

Q. You recollect the day or the night that he was hung? A. Yes, sir. I recollect it was Saturday, the morning after he was hung. The night I was at home.

Q. He was hung Saturday night? A. Yes, sir.

Q. When did you first hear of it? A. There was a messenger sent out to my house Sunday morning.

Q. Informing you of the fact? A. Yes, sir.

Q. Did you go up, sir? A. I did not, my brother went.

Q. Who was your brother? A. Albert Murray.

Q. Is he principal sheriff? A. Yes, sir.

Q. When did you go up—how soon? A. I do not think I was in Graham for two or three days after.

Q. Recollect as accurately as you can how soon you went

there? A. I do not remember exactly the first day I wa there after that.

Q. It was some time that week, you say? A. Yes, sir. some time the week after. I was there some day during the week; but I do not remember what day.

Q. I understood you to say that you were there the same week that this body was found? A. That was the week before, I spoke of.

Q. You don't understand me. I understood you to say his body was found on Sunday morning as you learned? A. Yes, sir.

Q. That was the first day of the week. I understood you to say that you were in Graham that week? A. I meant the week before he was hung. I did not understand the question

Q. You were in there the week before he was hung? A. Yes, sir.

Q. What day of the week? A. I think I was there on Thursday, I am not positive, previously to the time he was hung.

Q. I ask you if you were not there on Saturday? A. think not.

Q. Have you a distinct recollection about that? A. No sir; the only thing I speak from is, the sheriff had made appointments to be in Graham on Thursdays and Saturday Sometimes I went and sometimes he went. We both lived the same place. I think I went on Thursday as well as remember, and I rather think he went on Saturday. I am not positive of that, but am pretty positive that I did not go.

Q. Give us the reason which makes you think you did not go Saturday but went on Thursday? A. The appointment was made for the convenience of tax payers, to meet them there.

Q. I did not ask you what it was made for; I ask you the reason which makes you rather think now that you went on Thursday instead of Saturday? A. I generally did the business through the week; the sheriff went towards the latter part of the week and looked over what was done.

Q. Then you have no recollection whether you were there on Saturday or Thursday, only the principal sheriff looked over matters the latter part of the week to see what was done; that is all the reason you have for stating that you were not there on Saturday? A. He generally went once a week.

Q. Do I understand you to say that all the reason you have for stating that you were there on Thursday and not on Saturday is because he generally looked over the business, the latter part of the week? A. I don't know that his looking over the business was the reason of it.

Q. I have asked you for your reason. That is the question I put to you, why you stated you thought you were there on Thursday and not on Saturday, as you sometimes went on Thursday and sometimes on Saturday if I understand you? A. Yes, sir. I can't give any particular reason only my impression is, I was there on Thursday.

Q. That is all the answer you can give that you have some kind of impression you were there on Thursday and not on Saturday? A. Yes, sir.

Q. Is that all? A. Yes sir.

Q. Did you not go on both days, Thursdays and Saturdays? A. Sometimes when there was a public gathering on Saturday, and I went sometimes otherwise.

Q. You said these appointments were made for the benefit of tax payers and of course you expected to be there the days you appointed? A. That is one reason that I think my brother or I was there on Saturday, but I don't think I was there that Saturday.

Q. That is the reason for your belief that one of you were there? A. Yes, sir.

Q. You don't know whether your brother was there on Saturday or not? A. I don't.

Q. You can't say with any degree of certainty whether you were there or not? A. I cannot.

Q. What position, if any, did Outlaw hold there? A. He was elected one of the commissioners of the town. I don't

know whether he held the position at the time of his death or not.

Q. I ask you if you don't know that, at the time of his murder, he was one of the commissioners of the town of Graham? A. I believe he was, but I am not positive about it?

Q. Can you tell us when he was elected—how long before the murder? A. The commissioners of the town of Graham are elected on the first Monday in January.

Q. What was the time that he was murdered? A. I think it was in February—the latter part if I was not mistaken.

Q. His term of office had only commenced about a month before? A. Only about a month and a half or two months.

Q. I ask you whether you know the fact that there was great indignation felt against him because he accepted an office, among the citizens of the town, generally? A. I do not know.

Q. You heard nothing said about it? A. No, sir; I heard nothing said about it.

Q. What was his color? A. He was a black man.

Q. I ask you if before his murder you had heard anything said about chastizing him and driving him off or murdering him? A. I had not.

Q. Not from any human being? A. No, sir.

Mr. GRAHAM. I don't think the question a competent one but the answer is made.

Q. Do you know of any secret organizations in the county of Alamance known there as the "Kuklux Klan," the "White Brotherhood," the "Constitutional Union Guard" or the "Invisible Empire?"

Mr. GRAHAM. We object to the question.

The CHIEF JUSTICE. The court will hear the objection.

Mr. GRAHAM. Mr. Chief Justice and senators, the question involved in this inquiry is whether there was an insurrection in the county of Alamance; and before any evidence is admitted upon that subject, it is necessary to show some overt act of resistence to the government. Insurrection is one form

of treason and before any plots of a treasonable character can be shown it is necessary first to show a levying of war—some treasonable act; in other words, before there can be any evidence adduced in regard to the existence of a treasonable conspiracy, there must be proven some overt act of resistence to the government, which is levying war, and any combination of any sort, not for the purpose of resistence to law is not treason — is not insurrection.

These articles charge that the respondent falsely proclaimed an insurrection. We say that no such insurrection existed. He states by his answer that an insurrection did exist and it is necessary, if any attempt to show an insurrection be made, that there should be proven some overt act of resistence to the government before any other evidence is competent. The question arose in the trial of Burr and one of the grounds upon which he was acquitted was that the chief justice of the United States then presiding, having held that it was necessary to show an overt act of levying war, it was necessary to show a levying of war in the district where the court sat which took jurisdiction of the offence, and no such evidence having been given, the prisoner was acquitted.

Sir, combinations for any other purpose than resistance to the law, do not constitute insurrection or treason.

There are various authorities on that subject. I have only a single one immediately at hand; but it is laid down in Hale's Pleas of the Crown that if parties combine for the purpose of slaying or of beating or otherwise maltreating a person on account of any hostility to him, but do not seek resistance to the government, it is a riot, but is not insurrection or treason. That same doctrine is sustained by Foster in his Crown Law. It is sustained by Lord Campbell in a case to be found in the English Common Law Reports and which we can produce; and it is laid down by Judge Chase in the trial of Fries. And, sir, it is nothing but the common law of treason as regulated by the constitution of the United States and of this state.

Prior to the commencement of the late war, the constitution

of North Carolina had not determined what was treason agai
the state but left it to be established by the statute of Edw.
III; and Bryan a tory colonel, who raised a regiment in
Forks of the Yadkin, was tried for treason at Salisbury a
convicted on the ground that he had raised a regiment and go
into the British service against the United States at that ti
The record of that is brought forward by Governor Swain
his researches into the history of this state and will be fou
in a small volume entitled Revolutionary History of No
Carolina. But the doctrine is well established that, in order
make a combination an insurrection, which is treason, it
necessary that it should distinctly appear that the combinati
is for the purpose of resistance to the law. I will read to t
court one or two passages from Foster which I have here.

"Lord Chief Justice Hale, speaking of such unlawful asse
"bles as may amount to a levying of war within the 25 E. I
"taketh a difference between those insurrections which ha
"carried the appearance of an army formed under leaders, a
"prided with military weapons, and with drums, colors, &
"and those other disorderly tumultuous assemblies which ha
"been drawn together and conducted to purposes manifes
"unlawful, but without any of the ordinary shew and appara
"of war before mentioned.

"The true criterion therefore in all these cases is, Q
"*Animo*, did the parties assemble? For if the assembly
"upon account of some private quarrel, or to take revenge
"particular persons, the statute of treasons hath already det
"mined that point in favor of the subject. If, saith the statu
"any man ride armed openly (so the word *descovert* ought
"have been rendered), or secretly with men of arms agai
"any other to slay or rob him, or to take and keep him ur
"he make fine for his deliverance, it is not the mind of t
"king or his council, that in such case it shall be judg
"treason; but it shall be judged felony or trespass according
"the law of the land *of old time used* and according as the c
"requireth.

"Then immediately followeth another clause, which reacheth "to the end of the statute, and provideth that, if in such case "or *other like* the offence had thentofore been adjudged treason, "whereby the lands of the offenders had came to the crown as "forfeit, the lords of the fee should notwithstanding have the "escheat of such lands, saving to the crown the year and waft.

"I will make a short observation or two on these clauses:

"1st. The first clause is evidently declaratory of the common "law: It shall be adjudged felony or trespass *according to the "law of the land of old time used*, the second hath a retrospect "to some late judgements in which the common law had not "taken place; and giveth a speedy and effectual remedy to "lords of the fee who had suffered by these judgments.

"2dly. The words of the first clause descriptive of the "offence, 'if any man ride armed, openly or secretly with men "of arms,' did, in the language of those times, mean nothing "less than the assembling bodies of men, friends, tenants, or "dependants, armed and arrayed in a warlike manner in order "to effect some purpose or other by dint of numbers and supe-"rior strength; and yet these assemblies so armed and arrayed, "if drawn together for purposes of a private nature, were not "deemed treasonable.

"3dly. Though the statute mentioneth only the cases of "assembling to kill, rob or imprison, yet these, put as they are "by way of example only, will not exclude others which may "be brought within the same rule; for the retrospective clause "provideth, that if in such case, *or other like it*, hath been "adjudged. What are the other like cases? All cases of the "like private nature are, I apprehend, within the reason and "equity of the act. The case of the Earls of *Gloucester* and "*Hereford*, and many other cases cited by *Hale*, some before "the statute of treasons, and others after it,—those assemblies, "though attended many of them with bloodshed and with the "ordinary apparatus of war, were not holden to be treasonable "assemblies; for they were not, in construction of law, raised

"against the King or his Royal Majesty, but for purposes of a "private personal nature.

"Upon the same principle, and within the reason and equity "of the statute, risings to maintain a *private* claim of right, or "to destroy *particular* inclosures, or to remove nuisances which "affected or were thought to affect in *point of interest the par-* "*ties assembled for these purposes*, or to break prisons in order "to release *particular* persons without any other circumstance "of aggravation, have not been holden to amount to levying war "within the statute.

"And upon the same principle, and within the same equity "of the statute, I think it was very rightly holden by five of "the judges, that a rising of the weavers in and about *London*, "to destroy all engine-looms, machines which enabled those of "the trade who made use of them to undersell those who had "them not, did not amount to levying war within the statute, "though great outrages were committed on that occasion not "only in *London* but in the adjacent counties, and the magis- "trates and peace officers were resisted and affronted."

Lord Hale states that question at length. Some new inven- tion for a loom had been introduced in England, and the people engaged in the employment of spinning and weaving found that one man could do the work of a dozen by that invention, and they determined to destroy it. For that pur- pose they raised a mob that went about destroying all the could. The peace officers attempted to suppress the riot, an persons were identified and arrested and brought to tria That was held to be no insurrection, no treason, no resistanc of the government, although the officers were confronted an were resisted.

The author proceeds to show why the judges did not regar the offence as an insurrection:

"For those judges considered the whole affair merely as "*private quarrel between men of the same trade about the use* "*a particular engine*, which those concerned in the risin "thought detrimental to them. Five of the judges, indee

"were of a different opinion; but the attorney general thought "proper to proceed against the defendants as for a riot only.

"Sec. 3. But every insurrection which in judgment of law is "intended against the person of the king, be it to dethrone or "imprison him, or oblige him to alter his measures of govern-"ment, or to remove evil counsellors from about him,—these 'risings all amount to levying war within the statute, whether "attended with the pomp and circumstances of open war or "not, and every conspiracy to levy war for these purposes, "though not treason within the clause of levying war, is yet "an overt act within the other clause of compassing the king's "death."

So the book goes on in the same strain, making the distinction that unless the purpose is resistance to the law it is no treason—no insurrection. Such parties are indictable, to be dealt with in the courts of law, according to the ordinary course of proceeding, but they are not in any manner to be considered traitors or insurgents.

In this country have been made great advances in the law of treason. During the long disputes for the succession to the crown of England, there were a great many constructive treasons, and numbers of men were sacrificed not only in the wars between the houses of York and Lancaster for supporting one King or the other, but down to later periods this "conspiring and imagining the king's death," has sent many a man to the scaffold or the gibbet who was innocent of any purpose to commit the *crimen læsæ magistatis.* Treason is an offence against the very existence of the government itself—an attempt to overthrow it, to change its form or to prevent its particular measures from being carried into effect. In the authority I have quoted there is given the form of an insurrection, which I will read:

"The jurors for our present Sovereign Lord the King, upon "their oath present, that John Hamilton late of the city of "Carlisle, in the county of Cumberland esquire, otherwise "called John Hamilton late of the same place gentleman,

"Alexander Abernethy late of the same place gentleman, "otherwise called Alexander Abernethy late of the same place "surgeon, and George Abernethy late of the same place "gentleman, being subjects of our said present most serene "sovereign Lord George the second by the grace of God of "Great Britain, France and Ireland King, Defender of the "faith and so forth, not having the fear of God in their hearts, "nor having any regard for the duty of their allegiance, but "being moved and seduced by the instigation of the devil, "as false traitors and rebels against our present sovereign Lord "the king that supreme, true, natural, lawful and undoubted "sovereign lord, entirely withdrawing that cordial love, and "that true and due obedience, fidelity and allegiance, which "every subject of our said present sovereign lord the king "should and of right ought to bear towards our said present "sovereign lord and king: and also devising and (as much "as in them lay) most wickedly and traitorously intending to "change and subvert the rule and government of this king-"dom duly and happily established under our said present "sovereign lord the king, and also to depose and deprive our "said present sovereign lord the king of his title, honour and "royal state, and of his imperial rule and government of this "kingdom, and also to put and bring our said present sovereign "lord the king to death and final destruction, and to raise and "exalt the person pretended to be Prince of Wales, during the "life of James the second, late king of England, and so forth, "and since the decease of the said late king, pretending to be, "and taking upon himself the style and title of king of England "by the name of James the third, to the crown and to the "royal state and dignity of king, and to the imperial rule and "government of this kingdom, upon the tenth day of October, "in the nineteenth year of the reign of our said present sover-"eign lord the king, at the city of Carlisle aforesaid, in the "county of Cumberland aforesaid, with a great multitude of "traitors and rebels against our said present sovereign lord "the king, (to wit:) to the number of three thousand persons

"(whose names are as yet unknown to the said jurors) being "armed and arrayed in a warlike and hostile manner, (to wit:) "with colors displayed, drums beating, pipes playing, and with "swords, clubs, guns, pistols and divers other weapons as well "offensive as defensive, with force and arms, did falsely and trai-"torously assemble and join themselves against our said present "sovereign lord the king, and then and there with force and "arms did falsely and traitorously, and in a warlike and hostile "manner array and dispose themselves against our said present "sovereign lord the king, and then and there with force and "arms, in pursuance and execution of such their wicked and "traitorous intention and purposes aforesaid, did falsely and "traitorously prepare, order, wage and levy a public and cruel "war against our said present sovereign lord the king, then "and there committing and perpetrating a miserable and cruel "slaughter of and amongst the faithful subjects of our said "present sovereign lord the king."

So that this offence of insurrection is purely a *crimen lesæ majestatis*—it is of resistance to the government. An unlawful assemblage for the purpose of murder, is a felony, and liable to be punished as such. But to make an insurrection, there must be treason. There must be a design to resist the execution of the law by its appointed agents and officers.

In the trial of Fries, one of the Pennsylvania insurgents in 1799,—subsequent to the earlier trials in the whiskey insurrection, this was the form of the indictment.

"The grand inquest of the United States of America, in and "for the Pennsylvania district, upon their respective oaths "and affirmations, do present, that John Fries, late of the "county of Bucks, in the state and district of Pennsylvania, "yeoman, owing allegiance to the United States of America, "wickedly devising, and intending the peace and tranquility "of the said United States to disturb, and to prevent the exe-"cution of the laws thereof within the same, to wit, a law of the "said United States entitled an act to provide for the valuation "of lands and dwelling houses, and the enumeration of slaves,

"within the United States and also, a law of the said United "States, entitled "an act to lay and collect a direct tax within, "the United States" on the seventh day of March, in the year "of our Lord one thousand seven hundred and ninety-nine, in "the county of Northampton, in the State and district afore-"said, and within the jurisdiction of this court, wickedly and "traitorously did intend to levy war against the said United "States, within the same, and to fulfill and bring to effect the "said traitorous intention of him the said John Fries. He the "said John Fries afterwards, that is to say, on the seventh day of "March, in the said year of our Lord one thousand seven hun-"dred and ninety-nine, in the said state, district and county "aforesaid, and within the jurisdiction of this Court, with a "great multitude of persons, whose names are to the said great "inquest unknown, to a great number, to wit, to the number of "one hundred persons, and upwards, armed and arrayed in a "warlike manner, that is to say, with guns, swords, and other "warlike weapons, as well offensive and defensive, being then "and there unlawfully and traitorously assembled, did traitor-"ously assemble and combine against the said United States, "and then and there with force and arms, wickedly and trai-"torously, and with the wicked and traitorous intention to op-"pose and prevent, by means of intimidation and violence the "execution of the said laws of the said United States, within "the same, did array and dispose themselves in a warlike and "hostile manner against the said United States, and then and "there, with force and arms, in pursuance of such thie trai-"torous intention, he the said John Fries, with the said persons "so as aforesaid, traitorously assembled, armed and arrayed in "manner aforesaid, wickedly and traitorously did levy war "against the said United States."

And so it goes on in the other counts.

Then, sir, comes the charge of the judge which is also given in this appendix of the trial:

"By the constitution of the United States, article 3, section "3, it is declared, that treason against the United States shall

"consist only in levying war against them, or in adhering to "their enemies, giving them aid and comfort. By the same "section it is further declared "That no person shall be con-"victed of treason unless on the testimony of two witnesses to "the same overt act, or on confession in open court," and the "congress shall have power to declare the punishment of treason.

"Too much praise cannot be given to this constitutional "definition of treason, and the requiring such full proof for "conviction; and declaring that no attainder of treason, shall "work corruption of blood or forfeiture, except during the life of "the person attainted.

"This constitutional definition of treason is a question of law. "Every proposition in any statute (whether more or less dis-"tinct—whether easy or difficult to comprehend,) is always a "question of law. What is the true meaning or true import of "any statute, and whether the case stated comes within it, is a "question of law and not of fact. The question in an indict-"ment for levying war against, (or adhering to the enemies of) "the United States, is whether the facts stated do or do not "amount to levying war," within the contemplation and con-"struction of the constitution. It is the duty of the court on "this case, and in all criminal cases, to state to the jury, their "opinion of the law arising on the facts; but the jury are to "decide on the present and in all criminal cases, both the law "and the facts, on their consideration of the whole case.

"It is the opinion of the court that any insurrection or rising "of any body of people within the United States, to attain or "effect, by force or violence, any object of a *great public* "*nature* or of *public and general* (*or national*) concern, is a "levying of war against the United States, within the contem-"plation and construction of the *constitution*.

"On this general position the court are of opinion that any "such insurrection, or rising to resist, or to prevent by *force or* "*violence*, the execution of *any* statute of the United States, "for levying or collecting taxes, duties, imports or excises; or

"for calling forth the militia to execute the laws of the Union, "or for any other object of a general nature or national con- "cern, under any pretense, as that the statute was unjust, bur- "thensome, oppressive or unconstitutional, is a levying of war "against the United States, within the contemplation and con- "struction of the *constitution*.

"The reason for this opinion is, that an insurrection to resist "or prevent by force the execution of *any statute* of the United "States, has a *direct tendency* to dissolve all the bonds of "society to destroy all order and all laws; and also all security "for the lives, liberties and property of the citizens of the "United States.

"The court are of opinion that the assembling bodies of "men, armed and arrayed in a warlike manner for purposes "only of a *private nature*, is not treason; although the judges "or other peace officers should be insulted or resisted, or even "great outrages committed to the persons or property of our "citizens.

"The true criterian to determine whether acts committed are "treason, or a less offence, (as a riot) is the *quo animo* or the "intention with which the people did assemble. When the "intention is *unive fal* or general as to effect some object of a "general public nature, it will be treason, and cannot be con- "sidered, construed, or reduced to a riot. The commission of "any number of felonies, riots, or other misdemeanors, cannot "alter their nature so as to make them amount to treason—and "on the other hand if the intention and acts combined amount "to treason, they cannot be sunk down to a felony or riot. The "intention with which any acts (as felonies, the destruction of "property or the like) are done, will show to what class of "crimes the case belongs.

"The court are of opinion that if a body of people conspire "and meditate an insurrection to resistor oppose the execution "of any statute of the United States by force, that they are only "guilty of a "high misdemeanor, but if they proceed to carry "such intentions into execution by force, that they are guilty

"of the treason of levying war, and the quantum of the force "employed neither lessons, nor increases the crime, by one hundred or one thousand persons is wholly immaterial.

"The court are of opinion that a combination or conspiracy "to levy war against the United States, is not treason, unless "combined with an attempt to carry such combination or con- "spiracy into execution ;—some actual force or violence must be "used in pursuance of such design to levy war—but that is al- "together immaterial whether the force used is sufficient, to "effectuate the object; any force, connected with the intention, "will constitute the crime of levying war.

"To support the present indictment against the prisoner at "the bar, two facts must be found to your satisfaction—First, "that some time before the finding of the indictment, there was "an insurrection (or rising) of a body of people in the county "of Northampton, in this state, and with intent to oppose and "prevent, by means of intimidation and violence, the execu- "tion of a law of the United States, entitled "an act to provide "for the valuation of lands and dwelling houses—the enumera- "tion of slaves within the United States;" or of another law "of the United States, entitled "an act to lay and collect a "direct tax within the United States," and that some acts of "violence were committed by some of the people so assembled, "with intent to oppose and prevent, by means of intimidation "and violence, the execution of both, or of one of the said laws "of Congress.

"In the consideration of this fact, you are to consider and "determine with what extent the people assembled at Bethle- "hem, whether to effect by force a public or a private measure.

"The intent with which the people assembled at Bethlehem "in Northampton, is a necessary ingredient to the fact of assem- "bling, to be proved like any other fact, by the declarations of "those who assembled, or by acts done by them. When the "question is what is 'a man's intent,' it may be proved by a "number of connected circumstances, or by a single fact.

"If from a careful examination of the evidence, you shall be

"convinced that the real object and intent of the people assem-
"bled at Bethlehem, was of a public nature, which it certainly
"was, if they assembled with intent to prevent the execution
"of both the above mentioned laws of Congress, or either of
"them, it must then be proved to your satisfaction that the
"prisoner at the bar incited, encouraged, promoted, or assisted
"in the insurrection or rising of the people at Bethlehem, and
"the terror they carried with them, with intent to oppose and
"prevent, by means of intimidation and violence, the execution
"of both the above mentioned laws of congress, or either of
"them; and that some force was used by some of the people
"assembled at Bethlehem.

But, sir, the construction given on the trial of Fries, to the language of the clause of the constitution of the United States, establishes the construction to be given to the language in the constitution of North Carolina, the words used being the same. Treason or insurrection here, against the government of the state under our constitution, is precisely the same as treason or insurrection against the government of the United States under the federal constitution. So sir, I object to any evidence such as is proposed to be elicited by the question, until it shall be shown, as was required to be shown in the trial of Burr, where it was alleged that there was a conspiracy to commit treason, that there has been some overt act of treason committed. On the order of introducing evidence, it was held on the trial of Burr that the party should show some overt act,—levying war and that until they had done that it was futile to consume the time of the court in talking about a conspiracy. If the conspiracy was to levy war they must first show an overt act of insurrection and then the evidence might be permitted to prove that the conspiracy was not intended for any private purpose but was intended for the broader purpose of resisting the authority of the government. I say therefore that this is an important question in this case.

The CHIEF JUSTICE. The presiding officer would state

to the counsel that the half hour prescribed by the rules is concluded.

Senator WARREN. Mr. Chief Justice I think that the discussion can not be confined within the time allotted by the rule; and as this is one of the most important questions that will arise in the progress of the trial, I move that the time for discussion be extended indefinitely. For my part I desire to hear a full discussion of the subject.

A sufficient number seconding the motion.

The CHIEF JUSTICE put the question on the motion of senator Warren and it was decided in the affirmative.

Mr. GRAHAM, [resuming.] I merely desire Mr. Chief Justice, to call attention to some other authorities which I have not here at this moment but they will be here during the course of the discussion. We are very confident in the opinion, that we can maintain the position upon authority that insurrection is treason and that unless an overt act of resistance to the government by armed force be shown, there can be no pretence of insurrection, no matter what offences may have been committed in the way of riots, murders, or any-thing else. They amount to nothing in an investigation of whether there was or was not an insurrection, without the other evidence.

Mr. BOYDEN. Mr. Chief Justice, I concur with the counsel for the managers who has just addressed you, that this is a most important question and I feel under obligations to the court for having extended the time for its discussion indefinitely. I look upon it as the counsel does as the great question in the cause.

In order to comprehend the purport of the point raised I desire that you, Mr. Chief Justice and senators, should understand the ground on which the interrogatory is asked the witness. It is alleged on the part of the respondent, that there were secret societies or organizations in the county of Alamance, consisting of hundreds of men—perhaps the majority of the voters of that county—that their object was as we allege, not to take vengeance upon any particular individual, but to defeat

the execution of the laws. One was known by the name of the "White Brotherhood." That name is significant and, as one can see, shows to you what was its object. As we allege and expect to prove its object was that the laws in force, giving rights to the colored people were to be annulled and destroyed by the operation of this secret organization. Another association was called the "Constitutional Union Guard," and we expect to show that in this association the members were sworn by the most solemn oaths when they came into it, to stand by the constitution of the United States and the constitution of the state of North Carolina as those instruments existed previous to the acts of reconstruction; that their object was in fact to resist all those laws touching reconstruction so far as they exist in North Carolina and to deprive the colored race of their rights as secured under our present constitution and laws. That we say was what the Union Guard was sworn to do under most solemn oaths. Then there was the "Invisible Empire." That name itself is very significant. The Invisible Empire was to be an Empire within an Empire. Its members were to act secretly and their object was to set up an Empire to overthrow and resist all these laws of reconstruction and destroy their effect by this secret combination. We expect to offer full testimony before this court to show that these influences existed; and the first point in this case is to show that these three secret organizations did exist in the county of Alamance. I put the question expecting to prove not only that they organized these societies here, but with the very objects which I have stated and that they attempted to carry out their objects by force—seizing white men, who were standing by the reconstruction laws, and hanging them; by seizing colored men and chastizing them; by fifties if not by hundreds they committed these act of violence, and their sole object was to annul the reconstruction laws and the amendment of the state constitution of North Carolina by which colored men were given political rights.

The questtion I say was asked with that view, and how are

we met? We are met by reply that this would not constitute "treason." To that I respond by saying that there were large numbers engaged in these secret organizations and their very object was to overthrow the laws of the country and prevent their execution. It is true, these men went in companies of fifties and hundreds and endeavored to carry out their unlawful purposes in such a way as to prevent detection. But that, they say, does not constitute treason as they understand the laws of the United States and does not constitute treason against the state of North Carolina. I contend that it does.

But I have another answer which I will make first. It is no matter whether this constitutes treason or not. The act of January 29th, 1870, provides "that the governor is hereby "authorized whenever in his judgment the civil authorities in "any county are unable to protect its citizens in the enjoyment "of life and property, to declare such county to be in a state of "insurrection and to call into active service the militia of the "state to such an extent as may become necessary to suppress "such insurrection; and in such case the governor is further "authorized to call upon the president for such assistance if any, "as, in his judgment, may be necessary to enforce the law." Now whether what we expect to show comes up fully to the definition of treason under the laws of the United States, is not the main question in this case. The question is whether it is insurrection under the definition contained in this act. For the legislature have made a definition of what is to be termed insurrection in North Carolina. The gentleman shakes his head. He may dissent when his time comes; but, sir, I say that North Carolina has undertaken to determine by its legislature what shall constitute insurrection in North Carolina, and it is indifferent whether it be treason according to the laws of the United States or not. And as the question is whether it is insurrection, the great question now is, (and we expect to satisfy the court beyond a doubt of the fact,) whether that very state of things existed in Alamence which was contemplated by act of the legislature, and which authorized the governor if, in his

opinion, there was such an insurrection to call forth the militia to suppress it, and if necessary, also to call upon the president to aid him.

There can be nothing clearer to my mind than that the legislature had the power to make this definition of insurrection, and it is a matter of perfect indifference to my client, so far as this case is concerned, to determine whether it would amount to treason under the laws of North Carolina, or under the laws of the United States, for I take it for granted, that no man, no governor, or officer, is to be impeached for attempting to carry out an act of the legislature; in other words, no officer is to be impeached for an honest mistake in judgment. I say, then, that this act of the assembly contemplated the very state of things which existed in the county of Alamance at the time the proclamation was issued and at the time the governor took military possession thereof, as I say he had a right to.

I will first call the attention of the court to this distinction: according to the constitution of the United States, it is congress which has the power to call out the militia or call for troops to put down insurrection. Our constitution makes it different. This power is entrusted to the governor by our organic law, and he had a right under it as well as by this act, when in his judgment there was an insurrection, to call out the military as he might have done without the aid of the legislature. But he saw proper to do no such thing; he waited until the legislature had defined what would constitute insurrection in North Carolina and what would authorize him to declare the county in a state of insurrection, to call for the military; so that whether this be treason strictly so called, is a matter not necessary to be determined here. But, in my judgment, we shall be able to show beyond all controversy, I think, that this was treason under the laws of the United States and as defined in the laws of North Carolina. What do we allege was the object? It was to prevent the enforcement of that part of the constitution which secured to the colored race their political rights. That was the object as we allege. And what is the answer they give to this?

Why, if hundreds or thousands combine and attempt the accomplishment of this object, in disguise and in the night time, it does not amount to treason. Can the law be so unjust to itself as to adopt such a definition as that? Instead of its being a definition in favor of these insurgents, it is directly against them. The reason of the law would make it worse for them and make it a still stronger case of insurrection that they should attempt to do it by hundreds and thousands in the right time and in disguise, by which their persons could not be known and could not be identified. Bear in mind that the object is resistance to the laws, not individual vengeance; for that is not what we allege at all.

This question of treason, Mr. Chief Justice, has been sprung upon us, and we are not prepared to argue it at this moment. It is the great question—the all-important question of the case, and I trust it will not be settled here to-day by the decision of this tribunal; that we will have an opportunity not only to discuss it until the time arrives for an adjournment to-day, but that this will be the business of to-morrow, and that we will be enabled to look fully into the subject and be allowed to produce our authorities.

The whole case turns upon the decision of this question. If we are not permitted to show that there were these secret combinations, and that they were entered into for the purposes which I have declared in this case, the balance of the time occupied must be short; so that, it being the main point of the case, I trust every indulgence will be granted to the respondent, that each of his counsel may have full time to examine and to submit to this high court his views upon the subject.

These are off-hand remarks, made without any expectation that the case was to come to this point to-day.

Mr. MERRIMON. Mr. Chief Justice and senators, I join in the regret of the learned counsel that we were not advised by some means that the point now under consideration would be raised to-day, so that the authorities might be produced in support of such arguments as may be submitted on either side.

With all respect to my venerable friend who has addressed the court, I can but wish that he had argued the case a little more and not stated quite so much. He has made a very good speech, but he has consumed nearly all the time in stating what he expects to prove. I do not want to anticipate what he expects to prove, but I desire to debate the naked question before the court.

In the first place, it is alleged in the first two articles of impeachment that the accused proclaimed the inhabitants of Alamance and Caswell counties in a state of insurrection. The articles declare that that act on his part was wilfully and corruptly false—that in fact there was no insurrection in either of these counties. According to the general principles of law, any evidence, tending to show that there was an insurrection is competent, and it is equally manifest that no other evidence in the first instance, is competent in that respect. In this view, it becomes a matter of the gravest importance to determine what is insurrection; for if the respondent here offers evidence to show that there were combinations in the counties of Alamance and Caswell, or to show that offences were committed which do not constitute insurrection, I apprehend that it is very clear that such evidence is not competent, and there can be no pretence that it ought to be heard in court.

It seems to me, sir, with all respect to my brethren on the other side, that they misapprehend what is meant under the constitution of the United States and the constitution of the state of North Carolina by insurrection, and that they are comfounding insurrection with other offences known to the laws as well as to the constitution of both governments. There is, sir, such an offence as a "rout." When three or more persons assemble together for the purpose of doing some unlawful act, and they disperse without doing it, it is a rout. Then too, there is a "riot." When three or more persons assemble to do some unlawful act and they proceed to do that unlawful act, that is a riot.

It is important, sir, in view of the argument I propose to

submit, to keep these distinctions in view. There is a "rout" —an assemblage to do an unlawful act, and the offenders disperse without accomplishing it. There is a "riot"—an assemblage to do an unlawful act, which they proceed to accomplish. If the unlawful assemblage is to kill a man, and they do kill him, the act is a riot and the offenders may be tried for that offence. So, if there were an organization to kill one party, to drown another, and to whip and scourge fifty others, and persons assembled to do this did not accomplish their purpose, but dispersed without, their act is a rout. But, sir, no lawyer would say, if instead of dispersing, they had gone on and killed and drowned and scourged, their act would be an insurrection. The offences of riot and insurrection are entirely distinct, as much so as night and day, and the rules of law applicable to insurrection are as well laid down by courts as are any other rules which obtain.

What then is an insurrection? An insurrection is where there is a combination for the purpose and with the view to resist the government; for insurrection is a crime leveled at the government directly. I apprehend that the technical distinction between insurrection and treason is about this: where there is a combination to resist a particular law, as for the collection of taxes, and that particular law is resisted by force and open violence, that is insurrection. If there is a general movement against the government, with the purpose of overturning it or destroying any of its absolute powers as a government, and force is employed to that end, then it amounts to treason. The distinction between treason and insurrection is a very nice one indeed. I do not know of any other difference than the one I have stated, if there be any. Where there is opposition to a particular law, or a particular class of laws, and there is a combination of citizens to prevent their execution, and they proceed to resistance by force and violence, that resistance does not go to the life of the government, and the offence is only insurrection. But where the unlawful combination is to resist the government in a matter

that is vital to its existance, then the act of resistance becomes treason. This definition of insurrection, it seems to me, is not only in accordance with the common sense view, but it is that which is understood in this country and in England. And I beg to refer to two authorities which happen to be at hand, and the first is that of Webster as found in his unabridged dictionary in these words:

"A rising against civil or political authority; the open and "active opposition of a number of persons to the execution of "law in a city or state. It is equivalent to sedition, except "that sedition expresses a less extensive rising. It differs from "rebellion, for the latter expresses a revolt, or an attempt to "overthrow the government, &c."

That seems to me to embrace the distinction I insisted upon a moment ago. Then he adds:

"Insurrection is, however, used with such latitude as to com-"prehend either sedition or rebellion."

It is manifest that Webster, in determining upon his definition, has drawn upon the legal definitions contained in the books and from the decisions of the judges, in order to make it as he has. I read next from one of the highest authorities. Vattel on the Laws of Nations, 288:

"If the rage of the malcontents be particularly leveled at "the magistrates or other officers vested with the public "authority, and they proceed to a formal disobedience or acts "of open violence, this is called sedition; when it spreads, "when it infests the majority of the inhabitants of a city or "province, and gains such strength that even the sovereign "himself is no longer obeyed, it is usual, &c., to distinguish "such disorder by the name of insurrection."

I apprehend that in all of the authorities in England or in this country, whether we have reference to the authorities of under the federal government or under state governments, a no more thorough and precise definition could be given of insurrectionthan is contained in these two which I have cited from Webster and from Vattel.

In order to determine what insurrection is in the eye of our state constitution, where else should we go but to the constitution of the United States and to the authorities which have expounded it? Where else shall we look other than to England, that country from which we derive our notions of law mainly, to seek an exposition of what is meant by that term as incorporated into our own constitution? I apprehend no where else. When we see the word in our constitution we treat it there as meaning exactly what is meant by the term in the constitution of the United States and as used in England for the same purpose for which it was used when it was incorporated in the constitution of the United States. Then how has it been treated? How has it been understood in the constitution of the United States? There have been various insurrections in this country. There was the Shay rebellion which was an open defiance of the authority of government, by the rising up of an army of men numbering some ten thousand to subvert the law, prevent the courts from being held, and drive lawyers from the exercise of their profession. It was not a combination to do it merely, but an actual army, and the proceeding on the part of this army was to prevent the holding of the courts, and to prevent the doing of such acts as they desired to prevent. Take the case of insurrection in Rhode Island. There was Dorr claiming to be the true governor, and those under him claiming to be the lawful officers of the state. They assembled in force to the number of thousands, organized for the express purpose of subverting the government which was organized under the old charter—claiming that it was not the lawful government of that state. They said that the people had held a convention, that that convention was lawfully organized, and that Dorr was the lawful governor of the state, and that he and his followers appeared in open resistance to the chartered government.

Then, sir, take the case of the Whiskey Insurrection in western Pennsylvania, that occurred in the days of Washington, and when I say that, it means something, because he and his compeers

made the constitution and they understood what was meant by it and above all other men they were the ones to explain its meaning. That insurrection went on for weeks and months, and its supporters sought to drive the revenue officers from the state of Pennsylvania and prevent them from exercising their authority to collect the taxes. They assembled in armed force for the purpose of resisting the law, and this was permitted for months before the region was declared to be in a state of insurrection. The civil authorities were allowed to exercise their powers as best they might, and it was not until months had passed and the civil power had exhausted itself in its efforts to carry out the law that the proclamation of insurrection was issued. Then the military were called in aid, but officers were specially sent along to have the charge of the military, so as to see that they co-operated with the civil authorities in the execution of their processes. That was the exposition given by Washington.

There was another insurrection in Pennsylvania of a similar character. There was an open and violent rising up against the officers of the law, an open, notorious declaration that the law should not be executed. And, sir, every case in this country and every case in England that can be cited for the purpose of showing insurrection, will show beyond all question or equivocation that invariably where the offence was termed insurrection there was a rising up against the government to subvert the government or some particular law.

So here, insurrection under our constitution, means a combination—and not only a combination, but a combination to subvert some particular law or laws, or to subvert the government; or, to make reference to the suggestion of my friend on the other side, to subvert the reconstruction act, and the state government organized in pursuance of that; and there must be not only a combination to do it, but an actual rising up and exercise of force to that end. That is what the constitution means by "insurrection." Insurrection means, with reference to the statement the gentleman makes, that there should not only be a purpose to subvert the reconstruction acts and our new

government under them, but that the party actually proceeded to the execution of their purpose with armed force in resistance of the law. If they can show that the question they ask is perfectly competent.

Now my learned and venerable friend on the other side has said that they expect to show there were certain secret organizations in the counties of Alamance and Caswell for the purpose of subverting this government. If they can show any thing of that sort, it is competent for them to show it, provided they show first, some act of insurrection. They must show, sir, what amounts to a levying of war. They must show that these secret organizations there, in the nigh ttime or in the day time, appeared in great numbers and exhibited, in a violent way, a purpose of resistance to the laws. They cannot show that A B was killed, that C D was drowned, and that E F was whipped, until they first show an overt act on the part of this combination or some of its members for the purpose of resisting the execution of the law, or of subverting the state government under the reconstruction acts. That doctrine was expressly held by Chief Justice Marshall in the case of Burr, refered to by my learned associate a few moments ago. The existence of an insurrection is the point here at issue. If they seek to show an insurrection, they must first show the initial steps in it—the existance of an overt act, and then it is competent for them to prove what particular acts were done in furtherance of that insurrection, as that a certain party was killed, that another was hanged, another drowned, and others whipped and scourged. But in the offer of the counsel on the part of the respondent, they only propose to show that there was a combination to whip poor colored men, or scourge a particular class of white men and to kill others. I say it is utterly incompetent to show that, unless they show at the same time that this was done in aid of an insurrection; and when they have shown the existance of the insurrection, those acts become a part of the insurrectionary movement, and are admissible. They are not competent until then, because they

are not germain to the charges made in the articles of impeachment.

My venerable friend seeing the force of this argument and understanding the law as we understand it seeks shelter for the accused behind the act of the legislature known as the insurrection act of North Carolina. He says that "if we cannot show "there was an insurrection there, as understood within the "terms of the constitution of the United States and England "nevertheless the legislature of North Carolina has undertaken "to interpret what is an insurrection; they have passed an act "conferring on the governor certain powers and he must be gov-"erned by that act and these legal notions of insurrection "as understood by the framers of the constitution and the 'makers of our laws and by courts of justice must be ignored." I apprehend that that idea will not go down with any lawyer. I say that such a suggestion shocks the moral sense of any man who has any regard for the constitution of his country. I apprehend that the executive has too much intelligence to think that such an explanatory act of the legislature would confer upon him one mite of power. I give him credit for too much sense to suppose that he could act upon such a flimsey pretense or suggestion. Suppose, to show how absurd the idea is, that this act called the insurrection act should say that if two or three men should assemble together and agree to whip C D that shall constitute an insurrection and the governor shall have power to call out the militia to put down that insurrection; would my learned friend pretend that that was an insurrection contemplated by the constitution and that it conferred one particle of power upon the executive. Yet what they contend for here goes the whole length of that absured proposition.

They say that the passage of this act was in contemplation of the fact that there were unlawful assemblages in Alamance and Caswell counties whereby colored men were abused, and certain white men were abused in various ways, aud that the act was passed to prevent that particular class of offences, and that they called those offences insurrection; and they

empowered the governor to bring out the militia to suppress this crime. That is the length and breadth and essence of the proposition laid down by my learned friend on the other side. It is too loose. It will not do. It is ignoring the constitution. It is such a manifest ignoring of the organic law, and prostitution of the power, if it were intended on the part of the legislature, that it amounts to nothing, and would protect nobody. Who would undertake to exercise power under it? It would be absolutely null and void.

But my friend says he expects to show that these orgaizations to which he alludes were for the purpose of subverting public authority. I say that he may prove their acts, but he must first take the initial steps by showing that there was an insurrection—open violence to resist the law, and then he can go on and show these particular acts, but not until that time. He says that the issue here is, whether or not there were these particular organizations which he has mentioned; and if that be determined then it constitutes an insurrection there, as understood in the United States and England, and under this act in North Carolina, that then their case is made out and they make good their defense. I deny it squarely and absolutely. I say, that if the senate will allow them to go into evidence of that sort, the respondent can prove anything.

But, sir, let us consider this act a moment. I undertake to say that this act confers no such power, that it does not undertake to confer any such power and that it bears no such construction. Let us look at the question under the light of the legislation that has been had theretofore; and in the first place let us read the provision about insurrection.

"The governor shall be the commander-in-chief and have "power to call out the militia to execute the law"—that is the first thing for which he may call out the militia—"to suppress riots"—that is what I was talking about awhile ago—"or insurrection and to repel invasion." He may use the militia for these purposes, first to execute the law, second to suppress riots, third to suppress insurrection, and fourth to repel inva-

sion. I beg to call the attention of the senate to the fact that the act in its very terms makes a distinction between a riot and an insurrection. The framers of the constitution themselves well knew the distinction between the two and therefore the instrument which they made provides that the governor shall not only have the power to call out the militia to suppress insurruction, but to suppress riots as well, if there should be any in the state that the civil authority could not put down. Suppose there were a secret combination to whip colored men and white men or to commit murder—to kill every man of a particular class, sir, who would pretend that that was an insurrection. No man who understands anything about the terms used in our constitution, would pretend that such a combination was insurrection. It would be absurd to do so. But suppose such a combination existed in Alamance and Caswell. In the first place the civil authorities must exhaust their power to suppress it. There is no right to call the military out to suppress it until the civil authorities are unable to execute their offices. Whenever that riot becomes so powerful by reason of the numbers engaged in it, whenever they resort to such force by way of resistance to the civil officers—the judges, magistrates, sheriffs, constables or police officers—as that the processes of the court cannot run and that the officer with his ordinary posse cannot arrest the rioters, then, sir, and not till then, the governor must, in the exercise of a sound, honest and patriotic discretion, use the militia for the purpose of suppressing the riot. So in the case of an insurrection. When the insurrection is in the embryonic state, when those engaged in it are simply combining for an unlawful purpose, he cannot call out the militia to suppress it as an insurrection. Such a thing as a secret insurrection was never heard of in this country nor anywhere else. I say that while it remains secret and inactive, yea, I go further, and say if it is inaugurated by open violence for an insurrectionary purpose, even then the governor shall not call out the militia until the civil authorities have exhausted their power and the forces of

the insurrectionists have become so great that the civil authority cannot operate; then it is his right and his duty to fall back upon the armed forces of the state to maintain the majesty of the law. And even then, sir, that the military authority must only come in aid of the civil authority. Why do I say that? Because by provision of our constitution martial law and the absolute suspension of the civil authority cannot prevail in North Carolina. Those who framed this constitution provided that under no contingency was the writ of *habeas corpus* to be suspended. Martial law is the absolute suspension of civil authorit. Whatever is the will of the military commander, if martial law is proclaimed in Alamance and Caswell, becomes the law for the time being in that locality. But under our constitution, martial law cannot be proclaimed, for in terms, it states that the writ of *habeas corpus* shall not be suspended. What is that writ? It is a mandate running from a judge, commanding a person who holds a person in custody to bring that party before the judge to the end that his detention and arrest be enquired into and he be turned loose if he is unlawfully held, or remanded into custody if he is justly held by warrant of law. It runs everywhere. It runs absolutely. There is no qualification about it in North Carolina. If there be no suspension of it how can the will of the governor prevail under martial law, for he is bound to obey the writ of a judge to bring a party before him. Is it not manifest to every North Carolinian, that if the writ of *habeas corpus* shall never be suspended, martial law can never prevail within the limits of this state? I say, therefore, that when an insurrection becomes so formidable as that it undertakes to resist the authority of the officers of the law and when the militia is called in, it comes in as an aid to the civil authority and only as an aid because our constitution has placed this limitation upon the powers of the executive and very wisely, sir, as the events of last summer have shown. That is not so under the government of the United States. The ordinary writ of *habeas corpus* runs in the United States, but martial law may prevail when

the congress of the United States shall provide by law that the writ may be suspended in particular localities or that it may be suspended all over the Union; but it must be by the express authority of the representatives of the people. When that is attained the president may issue his proclamation declaring under the constitution and by virtue of the act of congress, that martial law shall prevail. Thereafter the writ of *habeas corpus* is silent and the civil voice is not heard. But that is not the case under the constitution of the state of North Carolina, as I have already remarked.

I desire to detain you but a few moments longer to call your attention to this insurrection act. I want to read that act in connection with the military act to show its intent and meaning. Let it be be understood that at the time our government under the reconstruction acts of congress went into operation, the militia of the state was absolutely disorganized. We only had a militia unorganized as defined by the constitution itself, and that reorganization of it was difficult when it is considered that our free population was greatly enlarged by the liberation of the slaves of the state; and legislation was necessary in order to reorganize the militia under the new government, so as to consist of colored militia in their place and white militia in their place, as the constitution provided that the militia of the state should consist of all men in the state whether white or black over 21 and under 40 years of age.

At the first session of the legislature after the constitution went into operation, an act was passed for the purpose of organizing the militia, which is chapter 22, page 135, acts of 1868. It goes on to provide how the militia shall be organized, and apprehending, it seems, some disorders under the new government, it provided for a detailed militia—that is, upon the certificate of five magistrates in any particular county, the governor may order a detail of so many men to go into that particular county for the purpose of aiding the civil authorities. This act provides in terms that this detailed militia shall only be used in aid of the civil authorities. In that respect the act

is only in affirmance of the constitution which provides in the same language that it shall only be used in aid of the civil authorities, for martial law cannot prevail for any other purpose.

It goes on to provide furthermore how this detailed militia shall be organized, how it shall be paid, that it shall wear a particular badge, and how it shall cooperate with the civil authorities in the execution of their duties. It is manifest that it was intended it should harmonize with the constitution, and that it was enacted in pursuance of the constitution in that respect. Is it not natural to infer, and is it not the rule of construction that where an act is passed by the legislature it shall be presumed that the legislature intended to make it conform to the constitution? It is not only a rule of courtesy between co-ordinate branches of the government, but it is a rule of law that where an act of the legislature will bear a construction that conforms to the constitution, that that act shall receive that construction, and that another construction which comes in conflict with the constitution shall be ignored and repudiated. Therefore, if this insurrection act, chapter 27, page 64, acts of 1869 and '70, will bear any such construction as will make it conform to the organic law in reference to insurrection that construction must be put upon it, and that is the only one which this court can put upon it.

But let us see if this act will bear such a construction as to make it harmonize with the provision of our organic law. In order to make it conform to the provision of the constitution to suppress insurrection, there must be actual insurrection. Will anybody deny that proposition? I say that in order that the governor may be authorized by the general assembly to call out the militia to suppress insurrection, there must be insurrection as defined by the constitution of this state and of the United States. That is so manifest that I suppose it will not be denied. But let us see what this act provides:

"The governor is hereby authorized and empowered whenever in his judgment the civil authorities in any county are "unable to protect its citizens in the enjoyment of life and

"property, to declare such county to be in a state of insurrec-
"tion, and to call into active service the militia of the state to
"such an extent as may become necessary to suppress such
"insurrection."

What does that mean? What construction must be put upon these words? Every senator here sitting in his place is a judge. According to the rule I have just laid down this court must make the act harmonize with the constitution if it can. It provides that the governor shall have power to call out the military to suppress insurrection. The fact that the words are inserted "whenever in his judgement the civil authorities "in any county are unable to protect its citizens in the enjoy-"ment of life and property" cannot alter the definition of the word insurrection and why? Because, sir, if you give those words the force and effect of what is meant by "insurrection," then you put this act without the pale of the constitution which you have no right to do if you can give any other construction which will make it harmonize with the constitution. I say then, that this section of the act should have (and manifestly it was so intended and no other construction can be given to it than that) the construction contemplated by the constitution. And what is that? That where there was such a demonstration on the part of any portion of the people that the civil power could not assert itself, in that contingency it would be proper for the governor to call out the militia to sustain the civil authority and bring insurrectionists to answer for the offences they had committed, not against the individual but against the government. I say that this act, if you put any construction upon it which is to conform it to the constitution, provides that only in case of insurrection shall the governor call out troops.

And I may add a suggestion here, though it is not material, that this act shows another thing; that it was framed upon the militia act and upon another act in reference to going masked, &c., and that it was intended that the militia should cooperate with the civil authorities in executing the law.

So, I say, sir, in the first place, the respondent must show an

act of insurrection—an act of rising up against the government or against the law or a particular class of laws of the government, in such force that the civil authorities cannot operate and perform their functions without the aid of the military; and when they have shown that the sheriff was resisted and the judge was resisted, and the magistrates were resisted, and the police were resisted by such force that the *posse comitatus* could not execute a process, then, sir, they have shown such an insurrection in that locality as would warrant the governor issuing his proclamation. I say "locality" for he cannot proclaim a "county" in insurrection. There is no phraseology in the constitution that authorizes a proclamation of a county in insurrection.

Let me repeat: after they have shown that there was a combination to resist the law, that there was an overt forcible act to resist the civil authorities and that were unable by a *posse comitatus* to make the insurgents obey the law, then I say the governor may by virtue of the constitution and by virtue of this act, (though the act is unnecessary as it only conforms to the constitution) call out the the military in aid of the civil authorities and restore order and the supremacy of the law.

I wish to advert to another matter. The ground taken by my learned friend is that the executive is the sole judge of when there is an insurrection, that his action shall not be questioned by any co-ordinate branch of the government. Sir, the language of the act is only in affirmance of the constitution and does not enlarge the governor's powers beyond what they are in the constitution, and I thank God that neither the legislature nor any other authority in this state have the right to confer upon the executive any such power. The idea, I suppose, grew out of the ruling of the chief justice in the several matters of *habeas corpus* before him. When these cases were pending he would not hear discussion as to whether there was insurrection in the counties of Alamance and Caswell. He said that he could not enquire in this collateral way whether there was or was not an insurrection there

as proclaimed by the executive. I apprehend that if the chief justice had gone further and had undertaken to decide whether or not this court for the trial of impeachments have power he would have said, without any hesitation, that it was the tribunal to determine that question. If the position assumed of the irresponsibility of the governor under this act be true, then it is in the power of the executive, if a portion of the people are distasteful to him, to forthwith declare them in a state of insurrection and by military power crush out their liberties; and they could never call him to an account for the wrongs he had committed. If the position assumed be correct, the governor is an absolute despot accountable to nobody. This, I say, is a a doctrine that is most distasteful to American citizens, and especially to North Carolinians, who have too great a sense of the value of personal freedom to consent to have their liberties thus placed in danger. It may be accepted under the despotisms of Europe, but it can never be tolerated for one moment in North Carolina.

What I wish to say, sir, is, that the governor, while he is invested with these high powers, is likewise invested with a high responsibility. If he shall violate and prostitute this high power the constitution has provided this very tribunal to bring him to an account for the lawless exercise of the power which had been given him for legitimate purposes; and although the constitution did give the executive the power to call out the militia, yet if he shall do it wilfully or arbitrarily—if he shall do it for the purpose of oppression, as alleged in this case, thank God the constitution has also provided a court by which he may be tried and deposed from the office which he has prostituted and disgraced; and, sir, the insurrection act does not enlarge and does not purport to enlarge the provisions of the constitution in that respect; and therefore if it shall unhappily appear that the governor of this state during last summer exercised power for the purpose of oppression, of crushing out public liberty to gratify political or personal malice, we have this tribunal to try him for it, and if he shall

be found guilty he will be deposed from the office that he has thus outraged.

I beg to add, sir, that I had no idea this discussion would be sprung upon us to-day. I had not even collected the authorities which can be produced and I shall ask leave to-morrow to hand in such as I deem pertinent if the discussion shall not be concluded to-day.

Mr. BRAGG. I am informed that the witness desires to make a correction.

WILLIAM M. MURRAY. *Examination resumed.*

By Mr. MERRIMON:

Q. What statement do you desire to make? A. I desire leave to correct the statement I made about Outlaw's holding a commission. He held a commission in 1869, but he was not an officer in 1870.

On motion of Senator Merrimon, the senate adjourned till to-morrow at eleven o'clock.

TENTH DAY.

SENATE CHAMBER, Feb. 7th, 1871.

The court met at 12 o'clock pursuant to adjournment, honorable R. M. Pearson, chief justice of the supreme court, in the chair.

The proceedings were opened by proclamation made in due form by the doorkeeper.

The CLERK proceeded to call the roll of senators when the following gentlemen were found to be present:

Messrs. Adams, Albright, Battle, Beasley, Bellamy, Brogden, Brown, Cook, Council, Cowles, Crowell, Currie, Dargan, Edwards, Eppes, Flemming, Flythe, Gilmer, Graham, of Alamance, Graham, of Orange, Hawkins, Hyman, Jones, Latham, Ledbetter, Lehman, Linney, Love, Mauney, McClammy, McCotter, Merrimon, Moore, Morehead, Murphy, Norment, Olds, Price, Robbins, of Davidson, Robbins, of Rowan, Skinner, Troy, Waddell, Warren, Whiteside, Worth—46.

Senator FLEMMING offered the following order:

Ordered, That this court adopt for its government the senate rules of order so far as the same may apply.

Senator GRAHAM, of Orange, offered the following as a substitute for the order proposed by Senator Flemming.

Rule——. Every senator who shall be within the bar of the senate when a question is stated by the presiding officer or who shall come into the bar before the vote on the question is announced by the presiding officer, shall record his vote upon such question.

Senator JONES moved to amend the rule proposed by adding thereto the words, "unless excused by a majority of the senators present."

The CHIEF JUSTICE put the question upon the amendment offered by senator Jones, and it was decided in the affirmative.

The CHIEF JUSTICE then put the question on adopting the substitute as amended, in place of the order offered by Senator Flemming, and it was decided in the affirmative.

The question was then announced on adoption of the rule as one of the rules of order of the court.

The CHIEF JUSTICE put the question on adoption of the rule and it was decided in the affirmative.

Senator ROBBINS, of Rowan, moved to dispense with the reading of the journal.

The CHIEF JUSTICE put the question on the motion of Senator Robbins, of Rowan, and it was decided in the affirmative.

The CHIEF JUSTICE announced that the court was ready to proceed with the trial.

Mr. CONIGLAND. Mr. Chief Justice and senators, my associate, Mr. Boyden, propounded this question to the witness on the stand:

"Do you know of any secret political organizations in the "county of Alamance known by the name of the 'Ku Klux "Klan,' 'the White Brotherhood,' 'the Constitutional Union "'Guard,' and the 'Invisible Empire?'"

The learned counselin behalf of the managers, [Mr. Graham,] has objected to the question for the reason, that he states it does not prove the existence of an insurrection, if it be admitted, and consequently, I suppose, that any question the answer to which does not prove an insurrection is not admissible on this trial. The distinguished gentleman in his remarks, proceeds upon the ground that insurrection includes treason—in other words, that the less offence includes the greater. Let me read from his remarks that it may be seen that I do not misrepresent.

"An unlawful assemblage for the purpose of murder is a "felony, and liable to be punished as such. But to make an "insurrection there must be treason. There must be a design "to resist the execution of the law by its appointed agents and "officers."

Sir, we assert that there is not a law book extant which defines treason and insurrection as synonymous terms, Treason, yet not always, includes insurrection, but every insurrection does not include treason. And I would like to ask the distinguished gentleman where he can find, in the authorities which he has quoted, the words "insurrection or treason" thus coupled together. I apprehend that the word "insurrection" as synonymous with treason, is not to be found in the authorities which he quotes, and that he alone is the authority which uses the words "insurrection or treason" in the relation in which he used them in his argument. But from his remarks we might be led to infer that the authorities make no distinction between insurrection and treason. Insurrection for certain purposes is not treason, but for certain other purposes is treason, and the authorities are full of recognitions of this distinction. But the learned associate of the gentlemen [Mr. Merrimon] differs in toto from him. He defines treason thus, "where "there is a general movement and force is used to overturn the "government or to distroy any of its absolute powers;" and he says insurrection "is where there is a combination and forci-"ble resistance to a particular law or class of laws." The first gentleman [Mr. Graham] says that insurrection is treason. His associate [Mr. Merrimon] says that insurrection is not treason. Who is the authoritative exponent of their views of the law?

I desire that they compose their differences, for I do not want to follow out different avenues of discussion. One calls for one defence and the other for another, and I desire to know to whom I am to reply on this point.

Mr. MERRIMON. Mr. Chief Justice, the learned counsel misunderstands my position. He inadvertently assigns to me a position I do not occupy. I conceded the doctrine which my learned friend states, and I went on to speak of a certain technical distinction which had been drawn, and stated that such a construction might be admitted in determining the significance of the two words, and that it was a very nice distinction which

might exist. I think there can be no question about the position I assumed.

Mr. CONIGLAND. Mr. Chief Justice, my deafness precludes me from hearing the learned gentleman's remarks, and his speech is not yet in print; but referring to the abstract furnished by my associates, I am led to suppose that the distinguished counsel differ, as I have stated. I say that they should compose their differences, consult their briefs, and reconcile their inconsistencies, before they call upon us to reply. I apprehend that the learned counsel [Mr. Graham] has been answered by his associate [Mr. Merrimon] who has stated that insurrection does not include treason. I am thus relieved of the necessity of making any reply to the proposition that it does include it.

The honorable manager, Mr. Sparrow, has given us a somewhat different definition from either of his distinguished associates. He quotes (page 114, of the printed journal of the proceedings of this court,) from Webster's dictionary, as follows:

"Arising against civil and political authority, the open and "active opposition of a number of persons to the execution of "law in a city or state. It is equivalent to sedition, except "that sedition expresses a less extensive rising. It differs from "rebellion, for the latter expresses a revolt, or an attempt to "overthrow the government, &c.

Page 114 Record.

We propose to introduce to this court testimony showing the existence and the acts of those secret societies, and that their object is a subversion of the law. The distinguished counsel, [Mr. Graham,] in his argument seemed to admit that if we prove an overt act we may prove the existence of the organization. Certainly, if I am not greatly mistaken, that is admitted in his argument; but let me read, in order that I may be certain of the language he used. I quote from page 302 and 303 of the printed journal of proceedings:

"The question involved in this inquiry is whether there was "an insurrection in the county of Alamance; and before any

"evidence is admitted on that subject, it is necessary to show "some overt act of resistance to the government. Insurrection "is one form of treason, and before any plots of a treasonable "character can be shown, it is necessary to show a levying of "war—some treasonable act; in other words, before there can "be any evidence adduced in regard to the existence of a "treasonable conspiracy, there must be proven some overt act "of resistance to the government, which is levying war, and "any combination of any sort, not for the purpose of resistance "to law is not treason—is not insurrection."

Does not that admit, Mr. Chief Justice and senators, that if we prove an overt act, we may prove the existence of these secret organizations? But, is it not very frequently the case, in the course of judicial proceedings, that evidence is introduced—to be connected with what may follow to make it admissible, but to be excluded if the condition be not fulfilled. The managers brought their witness and we asked him a question for the purpose of facilitating this trial. We might have told him to stand aside and call him again, but we asked him the question with the purpose stated, and the question was objected to because it was attempting to introduce evidence out of its order.

Now, sir, we propose to connect that organization with the overt act, and it can make no difference in what order we take up the evidence. We propose to prove the existence of these organizations, to carry them through all their ramifications and their acts against the law. When we make that proposition the distinguished chairman of the board of managers shakes over us the ferule of the Massachusetts school master, a great lexicographer, I admit, as if we were boys taking our first lessons in Webster's spelling book, and the strangest thing of all is that he seeks to impose upon this court the definition of Webster's dictionary, and rejects the definition given by the legislature of our own state. We read in our constitution that "the governor shall be commander in-chief and have power to

"call out the militia to execute the law, suppress riots, or insurrection and to repel invasion."

Now, sir, what is the course of argument? It is seeking for a definition of insurrection in order to ascertain whether we have acted under that clause of the constitution: and to show that we have not acted under the clause they quote upon us Webster's dictionary, and reject the definition of a body of which the distinguished managers are members! Let me read to you the legislative definition which is sought to be set aside in order that the respondent may be convicted upon the definition in Webster's dictionary. Taking out some of the words it is this:

"Whenever the civil authorities in any county are unable to "protect the citizens thereof in the enjoyment of life and "property, such county is in a state of insurrection."

This is the clear legislative definition. This is the definition of the body which the managers represent, and it is the definition of this body, a co-ordinate branch of the legislature of this state, and yet this definition is sought to be set aside as unauthorative and unconstitutional.

Mr. Chief Justice, what can be higher authority on the point in question than our own legislative enactments, save the decisions of our own supreme court? I recollect in my earlier days at the bar, I enquired of a great lawyer, who happily yet lives, why he laid so much stress on the decisions of our supreme court, he said, "because our own decisions are the highest "authority in our own courts." When this body seeks to expound the constitution, the decisions of our supreme court are as binding upon them in their public capacity as they are upon you or me in our private capacity. I may bring here decisions of the court of Queen's Bench, the court of King's Bench, the court of common pleas and the court of exchequer; I may bring decisions of the House of Lords, and of the highest courts of New York or Virginia, and yet the decisions of our supreme court overrule them all. If it were not so we would stultify ourselves, and we might as well abolish our supreme court, not only as in-

efficient, but as useless. Whilst I insist that the authority of our supreme court is of binding obligation in the state of North Carolina by a party of reasoning I hold that an act of this legislature, until it is repealed or declared unconstitutional, has upon succeeding legislatures an equally binding force, and I submit, as a principle of law that a succeding legislature cannot deny the constitutionality of an act passed by a preceding one. They are as much estopped to deny its validity as a man is estopped to deny his own deed. This legislature cannot assume judicial functions and attempt to interprate the law. They cannot be heard to say that this act is unconstitutional because it is an act that comes from themselves, which they themselves have enacted; they may repeal, but until they do repeal they cannot come in and declare their own acts void. If a legislature had any such power there would be no safety for executive officers holding positions in the state.

What position do the counsel for the managers occupy? We propose to give them a legislative definition of the language of the constitution. They say "it is true the respondent obeyed "the law, the very law which we ourselves made, but we shall "punish him because he did obey it." They enact a law and ask submission to its authority, and because an executive officer, on whom a judicial power is conferred, obeys that law, they propose to punish him therefor. The chief executive officer of the state is impeached for obeying the acts of the impeaching body, but when they propose to convict him, they condemn themselves, because they can only convict him by admitting that they themselves are the violators of the organic law.

Let us put this case by way of illustration of my idea. A bill has recently passed both branches of this general assembly known as the convention act. There are serious doubts entertained as to the constitutionality of the mode in which that act was passed. Suppose that the lieutenant-governor, who is governor for the time being, shall refuse to issue his proclamation calling an election under that act on the ground that the law is unconstitutional, will the house of representa-

tives impeach him? If they do so they will impeach him for not obeying one law, whereas they have impeached the respondent for obeying another law—in the one case they would allow the executive officer to judge of the constitutionality of an act, in the other they would not allow him, and perhaps should the governor issue the proclamation as required by the act a subsequent legislature may impeach him therefor, if the position which the counsel contend for is sustained. It is the provence of the judicial branch of the government to expound the law, as it is the province of the executive officers to administer it. The judiciary have the right under the constitution to decide upon the validity of a law, but the governor of the state has no authority to assume that function. If any other doctrine is to hold good there is no safety for him who administers the law. If we are not to take a law as constitutional which the legislature has enacted, how is an executive officer to protect himself? Governor Holden could not call upon the supreme court of North Carolina to give a judicial construction of the act in question. He had to take it as he found it and it is alike shameless and unheard of that the body which passed the act shall come in now and condemn the respondent because he has obeyed it.

Mr. Chief Justice, a precedent of the sort is not, in my opinion, to be found in the history of judicial proceedings in England or America. Well indeed may I quote the honorable managers and say this is a spectacle without precedent, and I trust that it may remain so.

We propose to prove that there existed in the counties of Alamance and Caswell at the time they were declared by the respondent to be in a state of insurrection, secret organizations known as the "White Brotherhood," an association of white people to prevent the operation of the reconstruction acts and the constitution of North Carolina in so far as they confer suffrage on the colored people.

We propose to prove the existence of a secret organization called the "Constitutional Union Guard," the members of

which were bound by an oath to support the constitution of the United States and of North Carolina as they were in force before the war and to resist by intimidation, by outrage and by force, all subsequent amendments to either, enlarging popular suffrage.

We further propose to prove the existence of a secret organization called the "Invisible Empire," an association of men to forcibly carry out, by intimidation, outrage and murder and the exercise of force, the behests and commands of the "White Brotherhood" and the "Constitutional Union Guard."

We propose also to prove that all these societies were known under the general name of the "Ku Klux Klan."

We propose likewise to show that these three organiations had a common purpose and a common design, to subvert the law; and we propose to prove various acts in furtherance of that common purpose and design. But we are told that we cannot do it because, forsooth, this common purpose and design was carried out by secret emissaries, and by secret ways and means, and therefore that the constitution and the Shoffner act, are alike inapplicable. Let us see how that will operate. In the county of Alamance two hundred or five hundred men, or every man in the county say that you shall not carry out a certain act of the legislature, and in furtherance of that design they go openly to the jail, break into it and take out a prisoner and liberate him, because they say the act shall not be executed. Now a continued purpose of this sort, it is admitted is insurrection. But if men meet in a secluded portion of the county, bring around them hired assassins, administer to them and the other members, terrible oaths to subvert the law and in furtherance of that design in the dead of night, when the purpose is known only to themselves, and to the all-seeing eye of God they take from the jail a prisoner and hang him in the court house yard, that, it is said, is not insurrection because it is a secret proceeding. Great God! what is to become of us, if there is no power to crush out these men who are thus engaged in subverting the law. We say to them that this

is the state of society in these counties, that these men are banded together to subvert the laws, to intimidate, and to murder. We say to them that these men have invaded the grand jury box, that they have invaded and controlled the petit juries, and that by reason thereof we can find no protection to life and property. And yet the reply is made that it cannot be remedied, that we have no power to remedy it, that society may be outraged, the laws subverted and anarchy reign supreme, their hands are without remedy because these men do their work in secret. The proposition need but be stated to be condemned. They seek here in this investigation to shut our mouths, to hide these facts from public view, and to throw the mantle of silence over these outrages.

We have been cited nearly altogether to precedents from the English courts. Now, I desire to show from the acts of the British parliament that their definition of insurrection is irrelevant, and has no force and I will cite acts covering precisely the same state of things that we have here. I suppose, sir, that the English constitution guards as sacredly civil liberty as the constitution of the United States or the constitution of North Carolina, indeed the very foundation of that liberty which we now enjoy may be traced to the magna carta of King John, the magna carta of Edward I, the petition of rights under Charles I, the *habeas corpus* act of Charles II, and the bill of rights of William and Mary, these are the great safe-guards of civil liberty in the British constitution, and I propose to show what the British parliament did, having regard to the constitution under which they legislated.

After the legislative union between England and Ireland, I need not say the united parliament exercised authority over the latter county, and Irishmen had the same rights, as to personal liberty under the British constitution, as Englishmen had. On account of various measures of the British government secret societies were organized in Ireland to subvert the laws and to carry out by secret means their purposes. Whilst no man has a livelier sense of the wrongs inflicted on Ireland I

have never seen the day nor the hour when I could have approved of one of those secret associations, not even to secure the repeal of the act of union to which I have referred, for, thank God, I am so constituted that nothing can induce me to apologize for crime, no matter upon what pretext it may be committed. Although I have been in sympathy with all proper means to redress Irish grievances under English rule, that does not prevent me from citing analagous cases from the history of that country. I have searched the state library to procure volumes of the British statutes, and being unable to find them, I will be excused if I quote from my only accessible books, which I think may be relied on for authentic facts.

I quote from page 1215 of Mooney's History of Ireland.

"In 1813 the provinces of Ireland were disturbed by mid-"night associations, called *cardas*, who legislated in the dark-"ness of midnight, under the obligation of secret oaths. "Their object was to lower rents and abolish tithes; their "means, threatening notices and carrying those notices into "barborous execution, inflicting torture on the unhappy objects "of their vengeance. This system of procedure only gave the "government more power, and embarrassed; Mr. O'Connell "and the catholic board; for the adverse press readily attribu-"ted to him the fomentation of these lamentable outrages.

"Peel, who succeeded Wellesly as secretary for Ireland, "introduced a series of coersive enactments, entitled insur-rection acts, "which enabled the lord lieutenant to proclaim any district he "thought proper in a state of rebellion; to suspend the trial "by jury!"

Now, Mr. Chief Justice, I assert, as an historical fact that those acts were passed to suppress the very same system of subversion of law which existed in Alamance and Caswell. I assert further, as an historical fact, that the acts which were passed to suppress these same societies were known by the general name of the "*insurrection*" acts. It is very hard to find any precise definition in the books of "insurrection," at east I have looked for it in vain; but I cite you to the histor

ical parallel that the acts passed by the British parliament for the suppression of the secret societies described in the extract, of a similar character to the Kuklux societies, were passed to suppress insurrection, and were known, and are still known, as "the insurrection acts," and I submit that this ought to settle the definition of the word. And, sir, there is another act of the British parliament with which some here present are doubtless familiar, known as the "coercion bill" which was passed in the year 1833. Earl Gray in introducing that bill in the house of lords made these remarks.

I quote from Hansard's parliamentary debates, volume 15, page 730.

"To give your lordships one singular instance of this, I will "mention the case of an orphan girl, gainst whom a mandate "of proscription was directed, and her master was ordered to "dismiss her from his service, because her mother had given "evidence against a person on a trial on account of tithes. "Such orders are enforced by the penalty of death; and cases "of this kind are so numerous that, if all the documents were "submitted to your lordships, they would cover the table, and "could not be read in any reasonable time. The proscription "of those who enforce the laws is one of the most dangerous, "the most alarming, the most fatal effects of these proceedings; "rendering the laws impotent, and the detection and punish-"ment of guilt impossible. The vengeance of these guilty men "is, of course, directed against prosecutors, witnesses, jurors, "and all who were engaged in carrying into effect the pro-"visions of the law. Such a state of things renders the adminis "tration of the law impossible; for neither witnesses nor jurors "will do their duty. I have statements, my lords, of measures "of violence exercised against persons under these circum "stances, which would occupy much of your lordships' time, "were I to read them; I will, therefore, confine myself to one "or two instances out of a great number which display the "intimidation employed to prevent jurors and witnesses from doing their duty. I hold in my hand, as one specimen, a

"letter from the chief constable of police, dated Cashel, no "longer ago than January 29th, which was forwarded for the "information of the lord lieutenant. This letter contains the "information that at eight o'clock in the evening, five armed "men had attacked a man by the name of Patrick Lalor, who was "nearly seventy years of age, ordering him to give up some "ground which he had taken two years ago. They took him "out and shot him, so that he survived only half an hour. The "constable had repaired to the spot, and all the appearances of "guilt appertained to a man by the name of Madden, who had "formerly occupied the ground. The son of Lalor was an eye "witness, and though his manner betrayed knowledge of the "transaction, he would not disclose the names of the perpetrators. "Here was an instance of an atrocious murder for holding land "contrary to the will of the Whitefeet, and of a system of terror "which prevented a son from giving evidence against the mur-"derers of his own father, lest he himself should experience a "similar fate. My lords, it is not necessary for me to advert "to the attack on the police at Carrickshough, for your lordships "know that, on that case, the jury would not find them "guilty, which was a striking proof of the impossibility of car-"rying the law into execution.

"At Kilkenny, also, at the assizes, the jury on a trial did not "agree, and they were dismissed. This was at a period of "considerable excitement, and they all agreed that nothing "should be known of their opinions; but within little more "than half an hour after they had been dismissed, a placard "appeared bearing the names of those jurymen who were for "the acquittal inscribed in black, and the names of those who "were for finding the parties guilty inscribed in red; as if "they were for blood; and the placard was headed—Blood! "Blood! Blood!"

I insist, Mr. Chief Justice, that the parallels are exact. It is true that Earl Gray said, they were not directing legislation against secret societies. He said:

"It is not a secret society; because it is not bound

"together by secret oaths; it does not hold secret meetings; the "individuals who direct it are acquainted with the laws, but "keeping themselves within the limits of the laws, while they "are engaged in this dangerous conspiracy to accomplish ulterior "objects."

The ulterior object referred to was a repeal of the union between England and Ireland, but this principal society to which Earl Grey refers, acted *without force*, except occasional outrage and intimidation, which he details, and subverted the law as he alleges by secret proceedings. What act did the British parliament acting under the British constitution, pass to meet that state of things. I read from the same history on page 1365.

"The reformed parliament met on the 19th of February, "1833, and Earl Grey, in the earliest opportunity, moved for "the introduction of the "coercion bill." That bill compre-"hended the following oppressive clauses:

"The lord lieutenant may suppress, by order, the meeting of "any assembly *deemed by him* dangerous to the public safety, "and may suppress any adjourned or continued meeting of the "same: every meeting so proclaimed shall be deemed unlawful, "and the members of it punishable for a misdemeanor. "Empowers two justices to enter by force, any house, where a "meeting may be *supposed* to be assembled, enables the lord "lieutenant to declare, by proclamation, any county in a state "of disturbance, and to require the application of this law—"orders the inhabitants in such district to remain in their "houses between sunset and sunrise. No meeting to be per-"mitted in such district, under the pretense of petitioning "parliament for the redress of grievances, without the *con-"sent* first obtained of the lord lieutenant. The lord lieutenant "may appoint any commissioned officers of the line to try "offences under this act—five to be a court—three to be a ma-"jority, and to have all the power of the judges of the land, to "imprison, punish, transport, or hang! They are to be assisted "by a law sergeant for advice as judge advocate. Enables the

"police, on being refused admission at any hour of the night, "to break open the doors, prevents appeals from the decisions "of these courts-martial, or redress for outrages committed by "the crown officers in prosecution of the law—*habeas corpus* "act suspended—offenders not bailable, &c. &c.

That the quotations I have made (for I could not get the English statutes) are correct, I refer to the whole debate upon the bill, which is contained in this volume (Hansard's Parliamentary Debates.) It was one of the ablest debates that ever took place in the British parliament, and it verifies the recitals of the act as I have read them. I have quoted thus largely from these authorities, to show you and the court, that although the liberty of the British citizen is protected by all the safeguards that the British constitution throws around him, yet when those secret societies, and societies without arms or uprisings existed, the British parliament suspended the writ of *habeas corpus* and proclaimed martial law. And moreover the acts passed to put down these said societies are all known in the parliamentary history and judicial history of Great Britain as "insurrection acts." I regard this as an authority of the very highest character to show that the state of things which we propose to prove was declared by the British parliament to be an "insurrection."

But another point to which I call attention is, that Earl Grey in his speech in the house of lords put the coercion bill on this ground also, that it was their duty to prevent a state of legislative union between England and Ireland by illegal means. things which might ultimately result in the subversion of the He expressly declared that it was the duty of the legislature to pass this act as a preventive measure. With us I insist that a society existed the purpose of which was to prevent the operation of the laws of North Carolina. Self-preservation is a principle inherent in every government, and it was the duty of the chief executive officer of the state to put down such a society—if he had failed to make the attempt, he would have violated the solemn sanction of his oath.

The constitution of the United States gives power to congress to provide for calling out the militia to execute the laws, suppress insurrection, and repel invasion.

The constitution of the United States vests the power in congress in the first instance, the constitution of North Carolina vests the power in the governor. The act of congress of 1795, provides, "whenever it may be necessary in the judgment of the "president," &c. The act of our general assembly, known as the "Shoffner act," provides, "the governor is hereby author-"ized and empowered whenever in his judgment the civil "authorities in any county are unable to protect its citizens "in the enjoyment of life and property to declare such county "to be in a state of insurrection and to call into active service "the militia of the state to such an extent as may become "necessary to suppress such insurrection." I now desire to call attention to the introductory speech of Mr. Sparrow to be found on page 126 of the journal of proceedings of this court. He there quotes the case of Martin *vs.* Mott, reported in 12 Wheaton, page 14, and I may as well read the quotation:

"Whenever a statute gives a discretionary power to any "person, to be exercised by him upon his own opinion of cer-"tain facts, it is a sound rule of construction that the statute "constitutes him the sole and exclusive judge of the existence "of those facts. And in the present case, we are all of opin-"ion that such is the true construction of the act of 1795. It "is no answer that such a power may be abused, for there is "no power which is not susceptible of abuse. The remedy for "this, as well as for all other official misconduct, if it should "occur, is to be found in the constitution itself."

The honorable manager adds, "meaning impeachment." But, sir, that is not what the court say, it is the comment of the learned gentleman to point the meaning of the court, as he would point the application of words in a declaration for slander by *inuendo*." It would be very strange indeed, if the court should declare that the statute constitutes the president the sole, the exclusive judge of the facts and yet he may be

impeached if he exercises that judgment; this is what the honorable manager would make the court mean, but I insist that such is not the proper construction.

I will call your attention to the clause of the opinion following that quoted by the manager.

"In a free government, the danger must be remote, since in "addition to the high qualities which the executive must be "presumed to possess, of public virtue, and honest devotion to "the public interests, the frequency of elections, and the watch-"fulness of the representatives of the nation, carry with them "all the checks which can be useful to guard against usurpation "or wanton tyranny."

I quote this as an authority, that when an act confers upon an executive officer a discretionary power, he cannot be impeached or tried for exercising that discretion, no matter how he abuses it. I stand upon the law, and I insist that no other construction can be placed upon the act. There is no intimation even, that, for the abuse of this power, the president may be impeached, but there is an express declaration of the supreme court of the United States, that whenever a statute gives discretionary power to any person to be exercised by him upon the occurrence of certain facts, it is a sound rule of construction that the statute constitutes him the sole and exclusive judge of the fact. Can words be stronger? We submit to this honorable court upon the authority of this decision, that under the "Shoffner act" the governor is made the judge of the fact, and of the necessity of action under the act, and that his action can not be called in question by any other department of the government.

The managers in their fifth article quote the decision of the chief justice of this state as their authority against this respondent. I ask them if they are prepared to ignore that decision at their pleasure? They stand upon it, they quote it, and if there be any meaning in words that decision sustains the very authority I have quoted. Mr. Badger used this language:

"The governor shall be commander-in-chief, and have power

"to call out the militia to execute the law, suppress riots or "insurrections and to repel invasions"—art. XII, sec. 3, con. The statute, 1869–'70, chap. XXVII, sec. 1, enacts: "The "governor is hereby authorized and empowered, whenever in "his judgment the civil authorities in any county are unable "to protect its citizens in the enjoyment of life and property, "to declare such county to be in a state of insurrection, and to "call into active service the militia of the state, to such an ex-"tent as may become necessary to suppress the insurrection:" and he insisted:

"1. This clause of the constitution and the statute empowers "the governor to declare a county to be in a state of insurrec-"tion whenever, in *his judgment*, the civil authorities are "unable to protect its citizens in the enjoyment of life and "property. The governor has so declared in regard to the "county of Alamance, and the judiciary cannot call his action "in question or review it, as the matter is confided solely to the "judgment of the governor."

Then his honor the chief justice says:

"I accede to the first proposition; full faith and credit are "due to the governor in this matter, because he is the compe-"tent authority, acting in pursuance of the constitution and "the law. The power, from its nature, must be exercised in "the executive, as in case of invasion or open insurrection. "The extent of the power is alone the subject of judicial "determination."

I insist that the very decision upon which the gentlemen rely sustains the decision which I have read from 12 Wheaton, and that this court cannot convict Governor Holden according to law, if it respects the decisions of the courts.

And there is another most important particular in which this evidence is admissible and that is on the question of intention. This respondent cannot be convicted unless he was actuated by a corrupt motive. The very first article presented by the managers speaks of the respondent "intending to stir up civil "war, and subvert personal and public liberty, and the consti-

"tution and laws of said state, and of the United States, and "contriving and intending to humiliate and degrade the said "state and the people thereof." It is not necessary for me to read every portion of the articles which charge a corrupt intent; it runs through the whole of them, and when we propose to exculpate ourselves and to give evidence of the facts and circumstances which governed the intention of the respondent, they refuse to permit us, and say we shall not exculpate ourselves, and shall give no evidence of such facts and circumstances as may be supposed to govern the intention of the respondent, but we shall be silenced. I will not dwell on this subject because it will be taken up by my associates.

But now let us inquire for a moment the point at issue. For a series of months past, the partizan press of this state, and stump orators of the state, have been charging Governor Holden with all sorts of wicked acts—with corruption in office, with the violation of his oath of office, with the violation of the constitution of the state and of the United States. He repelled those attacks and he said that the constitution and the law gave him the power to do as he did, and in doing as he did he was following out the solemn sanction of his oath of office. He proclaimed to the state and to the United States, that in the counties of Alamance and Caswell there existed secret societies banded together for the common purpose and with the common design of subverting the government. He claimed as his justification, that these secret societies acted in accordance with that common design and committed their outrages on society, whipping, drowning and murdering to such an extent that there was no protection for life or property. Did the house of representatives not know, when they impeached him what his defence was? They preferred their articles of impeachment to test the truth of the facts on which Gov. Holden proclaimed he had acted. It was for this that they brought him before this tribunal and called public attention to this fact; and now when in the presence of his fellow-citizens of the state, and of the United States, he avers his readiness to prove all that he has said, the

honorable managers shelter themselves behind a technicality, and seek to deprive him of the protection of that defence which they have pronounced to be false, and which they have cited him to maintain.

The honor of Gov. Holden is at stake, but so is the honor of the impeaching body—he meets the challenge of that body, and here, on the forum of their own seeking, he asks to be allowed to prove the averments which he has made in his defence. Protesting the legality of his acts, and appealing to that God who searcheth all hearts for the rectitude of his intentions, he proposes to show the existence of societies organized to subvert the constitution and the laws, and in furtherance of such their common design, persisting in a course of outrage and crime, disgraceful to humanity, unparalleled in the history of North Carolina, demanding the measures he adopted for their suppression, and for which he now stands impeached. But here before this forum to which he has been called, an objection is raised which, if sustained, excludes the very defence it was known he would make, and screens from exposure the organized bands of midnight murderers and assassins, whose evil deeds have disturbed the peace of the state, and whose sins, if God is just, will follow them like curses to the grave. Is it thus that he is to be silenced, and that they are to be screened? "Oh shame where is thy blush!"

Exclude this evidence, and be your decision what it will, the moral victory will be with William W. Holden—he will go forth from this chamber, acquitted in the public mind, while his prosecutors will stand condemned.

Mr. BRAGG. Mr. Chief Justice and senators, it seems to me that this discussion, especially on the part of our friends on the other side, has assumed a very great latitude, and a great many matters are invoked and brought into it and which are calculated, properly considered, to have but little influence upon the decision of this question. The highly eloquent and impassioned gentleman who has just addressed this body [Mr. Conigland] has uttered, as it seems to me, some very strange

doctrines—doctrines not bearing directly upon the question before the court and as to which I hope I shall be excused for saying a few words.

I had seen it before stated in the defence as put in in the answer of the respondent, that he claimed a discretionary power was given him by this act of January, 1870, and that he was not amenable to this court or any other court or to any body whatever. In his answer, page 25, he says:

"Further answering this respondent says that the constitu-
"tion of North Carolina and the laws then in force, vested in the
"governor thereof, a discretionary power to declare a county
"to be in a state of insurrection whenever in his judgment the
"civil authorities thereof were unable to protect its citizens in
"the enjoyment of life and property, that full faith and credit
"are to be given to the action of this respondent as governor
"of North Carelina in declariug, as aforesaid, the counties of
"Alamance and Caswell in a state of insurrection, and he sub-
"mits and insists that his said action cannot be questioned by
"any other department of the government."

I hear that doctrine reiterated here to-day with a still further assertion that the governor, at his discretion, may do anything as to a county or the people of a county, and that he is not even responsible by impeachment for his acts. If such a monstrous doctrine as that is to prevail, we may as well say farewell to civil liberty, for by it you inaugurate a despot in place of a constitutional government, and make his will the law instead of the constitution and the laws of the land. Sir, need I elaborate that question? I know that in a court of justice where a discretionary power is given to a public officer and he exercises that discretion, a court cannot call in question that exercise of authority. Such was the fact in the case of Martin *vs.* Mott, where the president of the United States called out the militia. A militiaman having disobeyed the orders his property was seized by judgment of a court martial and he brought his action to get it back. The court held they could not go behind the discretion vested

in the president of the United States, to call out the militia. They said, however, that if there was any abuse of his power, he was amenable as anybody else was amenable to the people who might turn him out of his office,—amenable by impeachment under the constitution, for an abuse of power. And, sir, if the accused in this case is not amenable for an abuse of power, if he can throw around him the mantle of this Shoffner act, as it is called, to save him from the consequences, I desire to know if he is not a despot, uncontrolled by any law or constitution, or anything except his own personal will. And what, sir, if such be the fact, becomes of our act in relation to impeachable offenses, which provides that "Every officer of the state shall be liable to impeachment for corruption "or misconduct in his official capacity." Yet, sir, it is assumed here, and now, that the legislature have undertaken to confer upon the governor discretionary power. And that neither your honor, sitting as a judge, nor this court, can hold him amenable for any misconduct in his official capacity; in other words, that his discretion is the law, and that a court of impeachment cannot sit upon his acts, because the legislature have undertaken to give him all this power—a power they had not themselves, and which they had no right to give by the constitution. The governor's powers are defined by the constitution, and if the legislature can give him this discretionary power, he is like the king of England, and "can do no wrong," and there is no way of reaching him. I have only to cite such a doctrine as that to show its absurdity.

Again my ardent friend on the other side has appealed to this very worst feature in the legislation of England, that has become a byword and reproach to the civilized world in respect to Ireland. I might say to him, as a native born Irishman, "*et tu Brute!*" I know that all that legislation to which he referred to sustain the action of our legislature, and to show that what transpired in the county of Alamance, was insurrection, receives his unqualified condemnation; but it is invoked here for the purpose of showing that the legislature of this

state, by the act of January, 1870, had given the governor the same power which was given in Ireland to suppress the secret societies in that distracted country. What was the character of that legislation? My friend has attempted to run a parallel between the state of things there, and the state of things in the county of Alamance, and while he has not exactly justified what was done there, he has virtually left such an impression, or left the subject so that the inference may be drawn that what was done in Ireland was right, and what has been done here is right also. Sir, I have not had time to examine the authority, if it be an authority, which he has introduced, it being a history of Ireland of that day, but I beg leave to read a little more in relation to the character of the legislation there. He has stated what it was, but let us see how it was carried out, and ascertain if we can, if the parallel can not be still further extended. I read from page 1217 of the same work [Mooney's History of Ireland.]

"During the long period of gloom and suffering, which "extended over the years of Peel's secretaryship in Ireland, the "business of spies, informers, and police flourished. Any "villian could get himself on the pay of Dublin Castle, by "going into a district where oppressive landlords resided, and "where the suffering people were easily excited to revolt against "the laws. Peel took occasion to represent Ireland in so "disturbed a state, that a strong police was required; and he "readily got leave to place six policemen, with full military "equipments, in every parish in Ireland. This new mode of 'government was previously unknown in either England or "Ireland. It consists of a half spy, half military body, without "possessing, however, one particle of military honor or chival-"ry, a force modeled after the *gens d'armes* of France, and "called by the people after the man who introduced it,—"Peelers.

"This iniquitous organization, with a full staff of spies, "informers, expectants, place-hunters, Orange magistrates, "Orange judges, Orange sheriffs, Orange juries, Orange attor-

"ney generals,—*saurin*, for instance—kept Ireland for twenty "years in a state which no description can picture. It is not "necessary to fill these pages with recitals of the petty tyranny "practiced on the people of Ireland by the ascendency party, who "held the corporate and government offices through Ireland. "From this party nothing but insults was experienced by the "Catholics. The government availed itself of the divisions which "naturally grew from these animosities, to enslave and barbarize "the people. Peel, who had an inveterate hatred of every-"thing Irish and Catholic, introduced, as a permanent system "of government, the most despotic laws which the history of "the past or the example of the present nations of Europe "offered as a model. The curfew law, introduced into England "by William the Conqueror, which rendered it criminal for a "man to be out of his house after sunset, was introduced into "Ireland by Peel. It was tacked to the insurrection act, "which conferred on the lord lieutenant of Ireland the power, "on receiving a request from sworn magistrates, representing "their district in a state of "disturbance," to issue his com-"mands, directing all persons in the county or barony to remain "within their houses after sunset, and not to come out before "sunrise, under penalties of being *transported beyond the seas* "*for seven years*; empowering any *two of these magistrates to* "*try, convict, and punish, under its provisions, without appeal.*

"Here was the establishment of the most galling and per-"fected system of tyranny that perhaps ever oppressed any "nation. For three and twenty years of O'Connell's public "life, Ireland was subjected to this barbarizing tyranny. "Twenty-one of the thirty-two counties of Ireland were, for "these twenty-three years, brought within the rule of this "species of government. The trial by jury was only a "mockery," and the laws a "snare.". In truth, the law was a "scourge, its officers corrupt, the judges partial, the juries "packed, and the government unprincipled and despotic. Peel "was secretary of state in Ireland, and Castelreagh secretary "of state in England."

Such was the state of things and has been in Ireland under this legislation which my friend invoked here in order to prove that insurrection existed in North Carolina.

My friend admits that the British parliament is omnipotent. It can pass any laws. It is not restrained by any written constitution as our legislative bodies are and under that power they enacted these oppressive laws; and yet that legislation is, invoked here to show that what the British parliament had enacted against every principle of liberty as to Ireland our legislature had a right to enact here, and our governor as our sovereign had a right to carry it out.

Now, Mr. Chief Justice, all this it seems to me is aside from the question immediately before the court. I ask pardon for having gone into it and I should certainly not have done so, if it had not have been for the impassioned appeal made by the counsel on the other side. The question now before this body as I understand it is this:

The managers here aver that at the time this county of Alamance was declared in a state of insurrection there was in fact no insurrection. The respondent through his counsel avers that there was an insurrection and that is the question we are trying. It is partly a question of law and partly a question of fact but we are now discussing the legal aspect of the question.

What is an insurrection under the constitution of the state of North Carolina as it was understood and intended by the framers of that instrument? I undertake to say here that our organic law defines and limits the powers of the legislature as well as those of the governor and every other department of the government. Nobody will controvert that. We are not living under a state government with unlimited powers like the parliament of England for is admitted by the learned counsel on the other side,—using the phrase of lawyers—that parliament is omnipotent and can do any thing, as is sometimes said, except make a man a woman or a woman a man.

Parliament is not confined or restrained by any written laws and constitution. Certain great principles and acts are some-

times refered to as parts of the British constitution, but there is no written constitution, nothing defining or limiting the power of parliament. Our state government on the contrary is one of definite and limited powers. Each department of the government has certain powers conferred upon it and the powers not conferred continue to rest with the people. Why do I say that? I say it because it is expressly provided in the constitution itself. If you will turn to section 37 article I—that part of the instrument termed the bill of rights—you will find these words:

"This enumeration of rights shall not be construed to impair "or deny others retained by the people. And all power not "here delegated remains with the people."

Now, sir, I undertake to say further that neither the government nor the legislature, by any acts or acts defining insurrection or any thing else, can change the effect of the constitution, can add to it or take any thing from it: In connection with that matter, I desire to call the attention of the body to certain other sections of the constitution itself. Section 21 provides that "the privilege of the writ of *habeas corpus* shall "not be suspended." Will any one pretend that the legislature can suspend that or give the governor the power to suspend it? Any attempt of the kind would be a mere nullity—nothing more and nothing less. The governor claims that he had a right to suspend it, but I apprehend that this body will not sustain him in that claim, notwithstanding the discretionary power which is set up for him, under the law of 1870.

Again art. 1, section 24, of the constitution reads as follows:

"A well regulated militia being necessary to the security of "a free state, the right of the people to keep and bear arms shall "not be infringed; and, as standing armies in time of peace are "dangerous to liberty, they ought not to be kept up, and the "military should be kept under strict subordination to and gov-"erned by the civil power."

Can the legislature do away with that provision of the constitution by any legislation of theirs, and if they cannot do it can

they authorize the governor to do it in fact or virtually? I think it will hardly be so contended.

Again section 35 of the same article uses this language:

"All courts shall be open, and every person for an injury "done him in his lands, goods, person or reputation, shall have "remedy by due ceurse of law, and right and justice adminis-"tered without sale, denial or delay."

Sir, can the legislature undertake to set aside that provision of the constitution, or can they authorize the governor to do it? I think not—clearly not.

Now let us see what power the governor has under the constitution in respect to this matter of calling out the militia in in case of insurrection. By article 12, section 3, the governor is authorized "to call out the militia to execute the law, sup-"press riots or insurrection and to repel invasion," and by another section of the constitution he is made commander-in-chief of the militia.

I concede that in the first instance, if insurrection exist, the governor is clothed with the discretion to call out the militia and has to be the judge of that. He may call out the militia to suppress insurrection, and ordinarily a court of justice cannot call in question that discretion. But if he calls out the militia when no insurrection exists or if he abuse the power given him by the constitution in the exercise of the authority, which is admitted to be possessed by him, he is amenable before this body as a court of impeachment. He cannot protect himself by saying that this excess of power or abuse of power was a matter of discretion which no other department of the government has a right to call into question, for that would place him above the law, above the government itself of which he was the chief executive officer. So it seems to me therefore Mr. Chief Justice, that we come back to the question of what is an insurrection as understood in the constitution.

There is a power given to the governor to suppress insurrection. What insurrection? The insurrection named and referred to in that article of the constitution which I have

named. Gentlemen on the other side undertake to vary that. It must be conceded, that besides this exceptional legislation by the parliament of Great Britain, which has nothing to do with the matter here now, that insurrection, in the meaning of the constitution, meant a rising up against the enforcement of the law, and all the precedents which have been read, with forms of indictments, &c., go to show that the word in the constitution means a rising up and resistance to the law and lawful authority. The act of congress which has been read, clothing the president with certain powers in relation to calling out the military pursuant to the clause in the constitution to suppress insurrection, requires that he issue his proclamation, and for what purpose? Warning the insurrectionist to disperse, showing clearly what was meant, that there was a body of men assembled in arms or in force in open resistance to the laws of the land. It is true that some of the gentlemen on the other side have feebly—and I say it without any disrespect—undertaken to show some other kind of insurrection, but they have not succeeded, I submit, in showing it either upon reason or authority. Sport is attempted to be made of the definition as to what constitutes insurrection, which has been read here. Upon such a subject Wester's dictionary is authority. It certainly is authority which is made use of in the supreme court of this state and in the supreme court of the United States, when it is sought to ascertain the meaning of words, even when used in statutes, in order to construe them.

But it is said that the legislature itself has defined what is insurrection and that that is binding and conclusive here—that the legislature having placed an interpretation upon the word by declaring that a certain state of things shall constitute insurrection, then *ipso facto* by that legislation, acts become insurrections which were not insurrections before under the constitution of the state. I deny any such doctrine as that. I say that the legislature have no power to add a jot or a tittle to the constitution; that they have no power to declare acts

insurrection which as understood in the constitution itself are not insurrection; and that they have no right to confer power upon the governor to make that insurrection which was not insurrection under the constitution by any legislation of theirs. And, sir, I go further and say that this legislature has not defined or undertaken to define what was insurrection. Have they stated of what it should consist in this act which has been referred to? There is nothing of that kind said. This is the language they have used."

"That the governor is hereby authorized and empowered, "whenever in his judgment the civil authorities in any county "are unable to protect its citizens in the enjoyment of life and "property, to declare such county to be in a state of insur-"rection, and to call into active service the militia of the "state to such an extent as may become necessary to sup-"press such insurrection."

What insurrection? Where is the definition of it? Where are we told what the insurrection is? We are told here that the legislature undertook to confer upon the governor a power whenever in his judgment, life and property were not safe, to declare a county in insurrection and that under that language whatever the governor thinks as to the want of safety to life and property is to be insurrection, or not as he may think—in other words they have undertaken to give to the governor, if that be the construction of the act, a power which they did not have themselves. Of course not having that power, any attempt to confer it on the governor is a nulity. But let us see what would be the effect, if that were the rule? A good deal was said yesterday in relation to the construction of this act. It was said that it was not to be supposed the legislature intended to violate the constitution. Let us see what would be the effect of that act, if construed as the gentlemen on the other side contend. Is there any authority in the constitution any where to the legislature to declare a whole county in a state of insurrection? Every man, woman and child in the county? Yet it is said that this is the effect of this Shoffner bill. Where is the power

to be found? I humbly submit that no such authority is to be found in our organic law. Can an act of the legislature, if it had said so in so many words, set aside the different provisions of the constitution which I have read, for that is really the effect of it, if the construction claimed is to be admitted? If the legislature cannot in terrors terms the constitution, no lawyer will pretend that they have authority to confer the discretion upon the governor to do it, least of all have they the right to clothe the governor with power to declare a county in insurrection, and thereby put all the citizens of that county at the mercy of one man when he thinks, or chooses to say that he thinks "the civil authorities are unable to protect its citizens in "the enjoyment of life and property." It is a monstrous power. I admit that they might empower the governor to call into active service the militia of the state to such an extent as may be necessary to suppress insurrection, by providing ways and means for doing so; but when they undertake to give him a discretion under which he claims thus to set aside the constitution and the law. I say that the claim on the governor's part is in excess of his powers under the constitution, and that the act with that interpretation is unconstitutional and void. They cannot empower the governor to suspend the writ of *habeas corpus* nor raise a standing force or army (for this is forbidden by the constitution of the United States.) Nor can they instead of keeping the military in subordination to the civil power, allow him or undertake to clothe him with authority to make the civil power subject to the military power; nor to clothe the civil courts which by the constitution are to be kept open for the redress of public and private wrongs and to substitute therefor military courts and commissions to try and execute citizens of the state, as has been claimed by the accused they had done.

Sir, it has been insisted that by the action of the legislature and the governor's proclamation all civil law for the time was at an end in this county, and the action of the British Parliament has been invoked to show not only that the legislature had a

right to do these things but that they had been rightly done, and that under the act of 1870 the governor was not amenable to any body for his acts in this respect.

But what is the meaning of the act of 1870? I submit that it bears no such interpretation as is claimed here, but only that the governor by that act was authorized, when an insurrection existed in a county, to declare that it *existed* there, and not to proclaim the whole county in a state of insurrection. The legislature had no such power. He could declare that an insurrection existed in a county, and there is no doubt that he had that right under the constitution; but he was reponsible if he should make such a proclamation improperly and corruptly, when in fact no such insurrection existed. He would be responsible notwithstanding the discretion was given him in the matter, for this act does not and cannot add a cubit to the length of his power; and so at last, Mr. Chief Justice, the question comes back as to what is meant by insurrection under the constitution. This law that is relied upon here cannot make a new offense of insurrection under that instrument. The word insurrection is well known and defined and was adopted by our fathers in the earliest of our constitutions and in the constitution of the United States, and it has been adopted in the constitution under which we now live, and we can have no definition by a legislative body to change the effect of the organic law. I care not how the legislature may have defined it, admitting that they undertake to make something insurrection which was not insurrection before. I care not what the British parliament has done, for as the gentleman admits they can do as they please. When we come to the state of North Carolina we have a written constitution and by that constitution certain powers are delegated to the legislature, and the legislature is restricted to those powers thus given. The word "insurrection" having a meaning under the constitution any act of the legislature referring to insurrection must accept the constitutional signification of the word. So here, this Shoffner act must be construed with reference to the constitution. If it can be har-

monized with the constitution then the rule is that such a construction of the law must be adopted.

It is not necessary for me to discuss the question which was raised by my learned associate [Mr. Graham] at the out set, whether treason was or was not embraced in insurrection. This question does not turn upon that. The gentleman on the other side may or may not be right in saying that insurrection is not always treason. Treason certainly embraces insurrection, but treason in England would not, because there are other acts constituting treason there which do not amount to treason in this country. The levying of war would embrace insurrection. Insurrection is well defined to be a rising of the people in resistance to the law. It is not the existence of secret associations or riots. It may well be that such persons have been guilty of riot. The killing of Outlaw, which has been spoken of, may have been guilty of a riot or even murder, but it was no insurrection. A parcel of men get together, determine to do an unlawful act, and a man is hung. That is a riot, and those engaged in it may be tried for a capital felony; but if they do not hang him they would have been indictable for a riot. Men may be indicted for conspiracy to do unlawful acts, but their conspiracy does not amount to insurrection; and if the governor is to be permitted to put the whole county in a state of insurrection with power to arrest whom he will, and imprison whom he will, and try whom he will by military commission, we shall have that state of things in North Carolina which has existed in Ireland and which has been so well portrayed in the work from which the learned gentleman read. That has been attempted to be inaugurated here. Men were arrested, the civil law was silenced, and a military court was ordered, and it is insisted, on the part of the respondent, that he had the discretion to do all these things. We say to the gentlemen, when they offer to make this proof and tell us that they have a great deal more behind, that they have begun at the wrong end of their case. They say it is a mere question of the order of the proceeding,

and that a court has the right to receive this proof when they tell us that they expect to connect these secret societies with overt acts thereafter to be proved and that there should be no objections to their proceeding now to prove the existence of these societies. We do not believe that they can show an overt act of insurrection and hence we desire that this trial shall proceed in its proper order according to the precedent quoted in the case of Bolman and Swartwont where it was ruled by the highest judicial authority in the land that they should begin by first proving the overt act. But they want to commence where they should leave off, and not now take up the time of this body by going into matters which are wholly immaterial at present.

The gentleman who last addressed the court, stated in his peroration that unless the respondent is allowed to give this proof, he will go out of this court, in the opinion of mankind, an innocent man. That is to be seen. I hope that no such remarks as that will weigh a feather before this court. Let the court do what they consider to be right in the premises and nothing more. I trust I am one of the last men in the world to deny to an accused every fair opportunity of making his defence, but I am not willing to concede any more in view of the claim they make, than what they have a right to under the law.

It is said that the governor had the right to believe that this act of January, 1870, known as the Shoffner act, was constitutional and that he acted under it in good faith as a constitutional act, and that you ought not now to hold him responsible, if he has been mistaken in the meaning of the law or its proper interpretation under the constitution. That is a matter to be shownin another way than by going into the particular facts which were called for by the question propounded by the counsel to the witness. We have offered evidence, as we humbly submit, to make out a case *prima facie* that there was no insurrection in the county of Alamance in the correct understanding of the word at the time the procla-

mation was issued. The courts were in session and there was no uprising of the people. Everything was going on in its usual order except here and there an outrage was perpetrated. As to any honest impression and belief of the accused that he had that power, that is a matter to be inquired into hereafter and in a different way. The proof that there existed these secret organizations might weigh something to ascertain what the motive was; but it is not so much that we object to as it is to proving *in limine* the existence of these societies as they stated they desire to follow it up with proof of other matters to show not insurrection, but offenses of a different kind. Whether this body will acquit the respondent because he acted from honest motives, and which the counsel said was the turning point in the case, it is not for me now to say. It is enough to say there are other questions—other matters charged and many of them, and let this question now pending be decided as it will, it will not affect the matters which are involved in those charges. And so, upon the whole, Mr. Chief Justice and senators, we submit that, the the question asked by the respondent's counsel is inadmissible. We have averred that there was no insurrection and have introduced *prima facie* evidence of that fact. They have averred that there was an insurrection and that the respondent did nothing but what he was authorized to do under the law; and the order of proof requires, before he proves any other facts, that he must show that there was an insurrection within the meaning of the constitution, and until he does make that proof, the question is inadmissible.

Mr. SMITH. Mr. Chief Justice and senators, the magnitude of the question that is now presented for the consideration of this body, must be my apology for availing myself of the kind privilege extended to counsel to discuss the question without limit as regards time. I shall endeavor to return the compliment by condensing my remarks and making them pertinent to the point at issue.

It will be recollected that the objection which we are now considering was made on the part of the counsel for the managers.

to a question which was put as to the existance of secret societies of an illegal character in the county of Alamance, and that my associate stated that he expected to prove a series of outrages in that county within the meaning of the first clauses of the Shoffner act. We are met by a denial of our right to produce evidence as to the existence of this wide-spread organization, and we are met with a further and stronger objection that we are not to be allowed to show any one of the facts alleged in the answer and upon which the respondent bases his defense. We are told by the gentleman on the other side that, according to the definition of insurrection to be found in the law books and dictionaries, this was not a case in which the legislature had a right to confer upon the governor the authority which was exercised. Now let us look at this one moment and see how these gentlemen, if I may be allowed to use the expression, adhere in the bark while they adhere to the letter of the law. The constitution of the state of North Carolina says that the governor shall have power to call out the militia for three objects,—to suppress insurrection, to suppress riots and to repel invasions. The gentlemen tell us that insurrection never exists until there is a physical uprising in opposition to the execution of the law, and therefore the governor had no right nor had the legislature the right to confer upon the governor the power to call out the militia in advance of the crime consummated making insurrection. The gentlemen therefore hold, that if there is insurrection in embryo, that is if men are organized with arms in their hands and with all the arrangements for this uprising, you have not the means of suppressing or repressing the movement until the uprising actually takes place. What is an invasion? Here is the definition of that: "The entry of a country by the "public enemy making war." An insurrection is a "rebellion "by citizens of the country against its government." What is a riot? The gentleman has defined that to be the meeting of men together constituting an illegal combination and then proceeding so far as to execute their purpose. When

a consipiracy exists—an unlawful assemblage, and no steps are taken to consummate their purpose, that is a rout, but when the purpose is fully accomplished it is a riot and not before. The argument of the learned counsel is that the governor has no right to suppress a tumultous assemblage, that is going to prosecute an unlawful design—that he has no right or power to repress the agencies—to prevent the execution of that which, when consummated, makes the offence a riot, so that, if the military forces were to arrest this illegal body, by reason of the want of a consummation of its purpose, the arrest would be a violation of the constitution, because there was no *riot*, and hence the constitution did not authorize the military power to be used. Suppose that a body of armed men are upon the frontier of the state organized and ready to make a descent on the county of Alamance or some other county that is not an *invasion* until they tread upon the soil of North Carolina. Yet, according to the gentleman's argument the governor's hands are tied and he dare not summon the military or call on a single man, but must wait until this organization of forces has actually invaded North Carolina and then, and not till then, can he call out the military, within the provisions of our fundamental law. So they say in reference to the matter under consideration, that he must wait until the acts have been fully consummated and accomplished, and then he can break up these organizations, and arrest the persons engaged in them, but he is powerless to call out the militia to break them up in their inception—in their embryo; or to use a homely expression, you may kill the chicken when it is hatched, but you cannot destroy the egg from which it is to be hatched." In our opinion this is not the meaning of the constitution. We believe that it was intended for a more beneficent and larger purpose. It was intended not only to arm the executive of this state with the means of punishing those who have committed crime, but it was also intended to prevent the execution of the purpose of creating an insurrection or of making a riot and hence was

preventive in its nature rather than punitory when the offence was committed.

Does the constitution authorize its officer to arrest and punish men after they have committed crime, and yet does not allow them to anticipate the fact by arresting the man who proposes to commit the crime and thus prevent its execution? That is the argument upon which they assume to hold the respondent liable upon this charge.

In 1795 an act was passed by congress to carry out a similar provision in the constitution of the United States, to enable the act president to call out the militia to repel invasion, and that expressly provided that he may not only repel it when invasion takes place, but may anticipate it and prevent it. Yet no question was ever raised, that under the power to repel invasion which was conferred by congress upon the president, he had not the power to anticipate and prevent that invasion which might be repelled after it had taken place. Here then we meet the gentleman in the beginning and tell him that we have a right to show any fact or circumstance tending to prove the existence of an organization the illegal purposes of which, in their prosecution, would in all probability result in riot or insurrection and which this act of 1870, and the constitution together were intended to give to the governor the power to repress. The strict definition of an offence and the proof required to sustain it, in the case of a person on trial, cannot be applied to an officer making efforts to prevent the perpetration of the act which, if committed, would constitute the offence without rendering vain and illusory all those constitutional and legal provisions intended for the repression of violence and wrong, and for the protection of liberty and life.

But aside from that let us see how this matter stands in another point of view. The existence of these secret organizations led to the enactment of a law by the General Assembly making it a misdemeanor for any persons to go about armed and disguised for the purpose of terrifying or frightening the people of the state, and making it a trespass committed by persons

thus disguised, a felony to be punished as such. The existence then of such organizations is forbidden by law.

Later we find the enactment, known as the Shoffner act, which declares that the "governor is hereby authorized and "empowered whenever in his judgment the civil authorities "in any county are unable to protect its citizens in the enjoy-"ment of life and property, to declare such county to be in a "state of insurrection and to call out into active service the "militia of the state to such an extent as may become necessary "to suppress such insurrection, and in such case the governor "is further authorized to call upon the president for such assis-"tance, if any, as in his judgment may be necessary to enforce "the law."

The learned counsel who last addressed the court says—and I really think he will scarcely ask the conviction of the respondent upon any such ground—that the general asembly has not in that act declared that those circumstances upon which the county might be declared in insurrection constitute themselves an insurrection, but on the contrary that the act has, by the use of that word, fallen back on the constitution itself for an interpretation and heretofore the general scheme and purpose of the act were not to enlarge or modify the provisions to be found in the constitution. Now as reasonable-minded men, senators acting as judges, are disposed, I am sure, to give this act its full and fair interpretation, let us examine and see what is its real intendment and meaning.

This act provides this:

"The governor is hereby authorized and empowered, "whenever in his judgment the civil authorities in any county "are unable to protect the citizens in the enjoyment of life "and property, to declare such county to be in a state of insur-"rection, and to call into active service the militia of the state "to such an extent as may become necessary to suppress such "insurrection."

What are the facts upon which he is to issue his proclamation? What are the things which must exist according to his

judgment to warrant the exercise of this power conferred upon him? All that is required is that, whenever in such judgment the civil authorities in any county are *unable to protect citizens* in the enjoyment of *life* and *propety*, whenever the citizens of a county are unsafe either in their life or property, the act says he may issue this proclamation to declare the county in a state of insurrection. Has he not, supposing that the ground existed upon which that judgment was based, literally exercised the very authority which this act undertakes to confer upon him? And will the gentleman say, when he was only required to determine upon the question of the safety of life and property that he must be answerable to this high court of impeachment because there did not exist the facts necessary to constitute an insurrection according to the best definition of it, although they are not in the statute, and although they are not made the ground upon which the proclamation was to be issued? If the governor believed that life and property were insecure and had reasonable grounds for that judgment, he is protected fully under that statute for issuing that proclamation, according to our view of it, whether in point of law the legislature had a right to enact it or not. It is at least, a legislative delegation of that power as expressed in this statute. This senate and the house of representatives—the parties to this impeachment—the one preferring the charge and the other trying it—these two bodies constituted this general assembly, and they have in the most solemn manner called upon the governor in such a contingency as this to *call* out the militia and use the military power of the state. Is he to be arraigned and punished for obedience to the law? Although he is not in terms required, yet that statute, according to its literal interpretation, is mandatory upon the governor, and had he ventured, with full and ample evidence that life and property were unsafe in that county, to have refused to execute the powers conferred upon him he might have been arraigned before this tribunal for not protecting the lives of citizens of this state.

On the other side, it is said that this act violates the constitution of the state of North Carolina. Who is to judge of that? Is this tribunal to pronounce it void? Will this senate, sitting as a court, do it? Perhaps it has such right and may now so declare, although the respondent had not the light and benefit of its judgment upon the constitutionality of the law when he was carrying out its provisions, and aiming to secure its objects in the county of Alamance. Is the governor of the state to be punished because he carried into effect and exercised the power which this whole general assembly claimed the right to exercise, and put in the statute under which he acted? I am aware it was urged in the trial of Andrew Johnson (much further than is urged in this,) that it was the duty of the president of the United States to carry into exercise an unconstitutional law, and he was impeached, and it was insisted by the managers there that he could not protect himself by showing that this very statute for violating which he was impeached, was, itself, an infraction of the constitution of the United States. Let me read from the speech of the managers in that case, to show how far the doctrine was carried from the claim which is here made. Mr. Butler said:

"We claim that the question of the constitutionality of any "law of congress is, upon this trial, a totally irrelevant one.

"The constitution substitutes this reconsideration and pas-"sage as an equivalent to the president's signature. After "that, he and all other officers must execute the law, whether "in fact constitutional or not.

"For the president to refuse to execute a law duly passed, "because he thought it unconstitutional, after he had vetoed it "for that reason, would, in effect, be for him to execute his "veto, and leave the law unexecuted.

"It may be said that he may *do this* at *his* peril. True; "but that *peril* is, to be impeached for violating his oath of "office, as is now being done."

It was claimed in that case (the other extreme of the propo-

sition maintained here) that it was the duty of the president of the United States to execute a law passed by congress clothed with the forms of an enactment although in fact he might believe it to be totally repugnant to and unauthorized by the constitution of the United States, while the managers of this prosecution, adopting the opposite view, undertake to impeach the governor of this state for what? For executing a law which they allege *violates* the constitution. They hold and maintain the opposite theory in the case of the governor from what the learned managers maintained on the trial of the president of the United States.

But I take it that it is not material to this inquiry what may be the final adjudication as to the unconstitutionality of this act. The guilt or innocence of the respondent cannot be made to depend upon the uncertain and unascertained judgment of this or the highest court of the state upon the question of the constitutional power claimed to be exercised by the legislature of North Carolina. Who can know with unerring certainty what are the limitations and powers conferred in the constitutions of the United States? What judge that sits upon the bench does not often exercise powers which are not conferred and refuses to recognize rights which are guaranteed under it, though in the exercise of an honest judgment as to what that constitution is? And if a judge cannot be impeached because he expounds the law wrongly, why shall the governor or another officer of the country charged with the execution of a law of the state that is not warranted by the constitution, be liable to this severe punishment for error of judgment ascertained by the decision of some tribunal long after the act for which he is tried? Would it be just and fair for a public officer to be held responsible upon such a rule as that? Would it be safe to hold a public officer to the exercise of any discretionary power if an error in judgment was to be followed up by his impeachment and degradation? In my judgment the question is whether the governor honestly exercised the

discretion conferred upon him by the statute, if he did there is an end of this prosecution so far as that charge is concerned. Let me not be misunderstood. The result does not follow that the learned counsel [Mr. Bragg] attempted to deduce from this proposition that the governor would be possessed of unlimited powers and those powers without any restraint if the doctrine for which we contend is correct and sound. That principle is that where the general assembly conferred upon any one of its officers a power to be exercised at his discretion upon a certain state of facts, if that discretion be *exercised in good faith* he is not answerable before this or any other tribunal. If under the pretence of exercising that discretion he abuses it and assumes powers which are not, and were never intended to be conferred, like all other acts of malfeasance in office he may be held accountable for his act; but if he honestly exercised his judgment, if in fact in calling out the militia he did honestly believe these facts to exist upon which he was authorized to call out the militia then, as we insist, there is an end of this charge as far as he is concerned; otherwise a man may be punished for the exercise of a discretion not sought, but on the contrary forced upon him by the legislation of the country. The enquiry is not whether that judgment was right or wrong, whether the state of facts did or did not exist upon which the senate would have authorized the calling out of this military force; that is not the question here? A discretion was imposed upon the governor and it was left to his judgment and to the judgment of nobody else, and when that judgment was properly invoked, when he honestly endeavored to decide the issue and did decide it according to his own convictions of duty, upon the facts then before him, I do say and say it on the soundest principles of law and common right that he cannot be impeached for the error which he may have committed as to the existence of the fact upon which his judgment was based. Suppose there had been a hundred witnesses who had come and testified to him of facts, the truth of which

would have warranted the calling out of this militia, and suppose, upon an inquiry the senate ascertains that a large proportion of these statements were unfounded, would the senate, by reason of the false information upon which he had exercised that discretion and had honestly acted, say that he was to be criminally charged with malfeasance in office and have him punished and degraded for that exercise of discretion? I repeat, and it is the point of my argument, that if the senate believe that Governor Holden in the exercise of his judgment upon the facts and information then before him, came to the conclusion that that state of things did exist upon which he he was authorized to call out the militia, it is a full and ample defence upon this trial.

Let me call the attention of this body to some of the difficulties and I may say the great injustice which would arise if the doctrine maintained here to-day is carried out and applied to this case. A case has been before the supreme court of the United States which was referred to by the counsel for the managers. It induced me to look at the writings of that great commentator of the constitution of the United States to see how far the exercise of discretion on the part of the president of the United States was a full protection to him. Judge Storey at section 1206 of his commendtaries on the constitution says:

"At a very recent period, the question came before the "supreme court of the United Ssates for a judicial decision; "and it was then unanimously determined, that the authority "to decide, whether the exigency has arisen, belongs exclusively "to the president, and that his decision is conclusive upon all "other persons. The court said that this construction necessa-"rily resulted from the nature of the power itself, and from the "manifest objects contemplated by the act of congress. The "power itself is to be exercised upon sudden emergencies, upon "great occasions of state, and under circumstances which may "be vital to the existence of the union. A prompt and "unhesitating obedience to orders is indispensable to the com-"plete attainment of the object. The service is a military ser-

"vice, and the command of a military nature; and in such "cases every delay and every obstacle to an efficient "and immediate compliance would necessarily be to jeopard "the public interests. While subordinate officers or sol- "diers are pausing to consider whether they ought to obey "or are scrupulously weighing the facts upon which the com- "mander-in-chief exercises the right to demand their services, "the hostile enterprise may be accomplished without the "means of resistance. While subordinate officers and soldiers "are pausing to consider whether they ought to obey, or are "scrupulously weighing the facts upon which the commander- "in-chief exercises the right to demand their services, the "hostile enterprize may be accomplished, without the means "of resistance. If the power of regulating the militia, and "of commanding its services in times of insurrection and "invasion are, as it has been emphatically said, they are, "natural incidents to the duties of superintending the com- "mon defence, and of watching over the internal peace of "the confederacy, these powers must be so construed, as to "the modes of their exercise, as not to defeat the great end "in view. If a superior officer has the right to contest the "order of the president, upon his own doubts, as to the "exigency having arisen, it must equally be the right of every "inferior officer and soldier, and any act done by any "person in furtherance of such order would be subject to "responsibility in a civil suit, in which his defence must "finally rest upon his ability to establish the facts by "competent proofs. Besides, in many instances the "evidence, upon which the president might decide, that there "was imminent danger of invasion might be of a nature not "constituting strict technical proof; or the disclosure of the "evidence might reveal important state secrets, which the pub- "lic interest and public safety, might imperiously demand to be "kept in concealment! The act of 1795 was framed upon this "reasoning, The president is by it necessarily constituted, in "the first instance, the judge of the existence of the exigency,

"and is bound to act according to his belief of the facts. If he "does so act, and decides to call out the militia, his orders for "this purpose are in strict conformity to the law; and it would "seem to follow, as a necessary consequence, that every act "done by a subordinate officer in obedience to such orders is "equally justifiable. The law contemplates, that under such "circumstances orders shall be given to carry the power into "effect; and it cannot be, that it is a correct inference, that "any other person has a right to disobey them. No provison "is made for an appeal from, or review of the president's opinion. "And whenever a statute gives a discretionary power to any per-"son to be exercised by him upon his own opinion of certain "facts, the general rule of the construction is, that he is thereby "constituted the sole and exclusive judge of the existence of "these facts."

It will be seen, Mr. Chief Justice and senators, that the reasons given for the non-responsibility of the executive officer of the United States for acts within the discretion conferred upon him by statute, are that the grounds upon which he acts are not strictly capable of proof before a judicial tribunal. Considerations involving the public good may not permit, and often do not permit, them to be published to the world; and to hold him responsible for exercising his judgment by going into an inquiry to determine whether he believed he ought to have thus acted, is to violate the whole scope and purpose of the law and to subject him to an iniquitous judgment. The only inquiry is, has he been guilty of *misconduct* in office—has he wilfully violated his duty. If he has, he is amenable to this impeachment. But if this discretion was honestly exercised and if the senate believe that was *his judgment* and that he had reasonable grounds for that judgment, the defence is complete so far as that branch of the controversy is concerned. He cannot be held and must not be held responsible and especially in this proceeding because he has erroneously, according to your opinion, exercised a discretion conferred upon him by the statute. His powers under our constitution are precisely the

powers conferred by the congress of the United States upon the president of the United States under the federal constitution, and they were conferred upon him under the constitution of North Carolina, and are regulated and restrained in a measure by the act to which I have called the attention of the court.

In this connection, I beg further to refer to a case reported in 11 Johnson, New York Reports, page 120, in which Judge Spencer uses this language:

"The case of *Harman vs. Tappenden and others* (1 East "555,) *and Drewry vs. Colton*, in a *note* to that case, clearly "show that this action is not maintainable, without stating "and proving malice express or implied on the part of the "officers. In the case in the text, Laurence, judge, said: "'There is no instance of an action of this sort maintained for "an act arising merely from error of judgment;' and he "cited Mr. Justice Wilson's opinion in *Drewry vs. Coulton* "with approbation. In that case the suit was for refusing "the plaintiff's vote. Justice Wilson considered it as an "action for misbehavior by a public officer in the discharge "of his duty, and that the act must be malicious and wilful "to render it a misbehavior: and he held that no action "would lie for a mistake in law. In speaking of the case of "*Ashby vs. White*, he considered it as having been determined by the house of lords on that ground, from the reso-"lutions entered into by them. The whole of Judge *Wilson's* "reasoning is clear, perspicuous and irresistable; and is fully "confirmed in *Harman vs. Tappanden*. It would, in our "opinion, be opposed to all the principles of law, justice and "sound policy, to hold that officers, called upon to exercise "there deliberate judgments, are answerable for a mistake in "law, either civilly or criminally, when their motives are pure, "and untainted with fraud or malice.

The honorable managers themselves have understood this to be the true construction of our constitution in relation to impeachment for they have not neglected in every one of their

charges to allege not merely the violation of the constitution of North Carolina and the laws of the state, but a wilful and corrupt violation of those laws. All through the impeaching articles they have imputed to the respondent, the motives which in their judgment, and rightfully in their judgment, were necessary to constitute the impeachable offense charged against him. And now striking out all those it is seriously contended that because the learned gentleman [Mr. Bragg] is able to make an argument to this body, that the act is in violation of the constitution of the state and because he may have to your satisfaction established the fact, he is at liberty to ask the conviction of the respondent because he shared the sentiment of the general assembly that passed that act and carried, into execution their positive injunctions to him. They have made it his duty to protect the life and property by the strong arm of military power, and whenever the civil authorities in his judgment were incompetent to that end they have said to him that he must declare that county in a state of insurrection. We say that he has literally exercised the power conferred upon him in the act and no more. For the exercise of the power conferred upon him by that act he is not accountable whether in the judgment of this body that act is or is not an infraction of the constitution of the state of North Carolina.

Again, sir, my colleague [Mr. Conigland,] illustrated our position, and I beg a moment to call the same matter again to the attention of the senate. There has just been passed by the general assembly an act providing for the calling of a convention of the people of North Carolina, and it is required of the governor to issue a proclamation with the view of carrying its provisions into effect. According to the views of gentlemen on the other side, if the governor should issue his proclamation and endeavor to carry that law into effect, and it should hereafter be held, and if my friend shall be able to argue and show that the constitutional power to pass that law does not exist in a mere majority of the members of either house, the governor would be liable to impeachment before this body for issuing his

proclamation and giving thereby force and effect to a measure which another senate may hereafter consider as a violation of the constitution of the state; that is, he could be impeached for carrying into effect that unconstitutional law. If the motive is to be lost sight of, and the honesty and *bona fides* of his conduct are to be overlooked, your governor is just as responsible to the senate for carrying out that act, if it should hereafter be determined to be unconstitutional, as Governor Holden is to be punished now for carrying this act into effect because it is unconstitutional.

But there is another view of this case to which I call the attention of senators. The admission of this evidence can work no harm to the prosecution. Whether its effects shall be to exculpate him upon the final argument is a question which will be open, still, for discussion. But exclude it and in what condition do you leave this case? Suppose a minority of more than one-third shall deem the evidence admissible and proper, and believe that the senate ought to have all the facts proposed to be given in evidence before them, that minority may determine the issue of this prosecution, two-thirds of this body being essential to conviction; and is it prudent and safe to rule out, upon this preliminary matter, evidence which a minority, more than one-third, most honestly believe should have been heard and if the facts alleged were fully established, should acquit the defendant of the charge? These views are not new, they were presented with very great force, and I think very correctly, on the trial of Andrew Johnson.

Mr. Curtis in behalf of the respondent, said:

"The honorable manager's argument may be a sound one; "the senate may ultimately come to that conclusion after they "have heard this cause; that is of discussion into which I do "not enter; but before the senate can come to the considera-"tion of those questions they must pass over this allegation; "they must either say as the honorable manager says, that it is "wholly immaterial what opinion the president formed or un-"der what advice or circumstances he formed it, or else it must

"be admitted by senators that it is material, and the evidence "must be considered.

"Now, how is it possible at this stage of the enquiry to deter- "mine which of these courses is to be taken by the honorable "senate? If the senate should finally come to the conclusion "that is wholly immaterial, this evidence will do no harm On "the other hand, if the senate should finally come to the con- "clusion that it is material, what the intention of the president "was in doing these acts, that they are to look to see whether "there was or not a wilful violation of the constitution, then "they will have excluded the evidence upon which they could "have determined that question, if it should thus prove to be "material.

"I respectfully submit, therefore, that whether the argument "of the honorable manager is sound or unsound, whether it will "finally prove in the judgment of the senate that this evidence "is immaterial or not, this is not the time to exclude it upon "the ground that an examination of the merits hereafter and a "decision upon those merits will show that it is immaterial. "When that is shown the evidence can be laid aside. If the "other conclusion should be arrived at by any one senator, or "by the body generally, then they will be in want of his evi- "dence which we now offer."

So great was the difficulty of rejecting evidence that might become material and pertinent on the final hearing that Senator Sumner of that body proposed to admit all kinds of evidence except such as was decidedly immaterial or trivial. The proposition did not prevail it is true, but this resolution was offered by Senator Sumner because of the embarrassment and difficulty which he saw might arise in consequence of the rejection of a large body of evidence upon which the conviction or acquittal of the accused might ultimately depend.

Again, all this evidence is material upon the question of the intent upon which these acts were done. It is the intent that constitutes a crime for which impeachment lies—not errors of judgment but *wilful* violations of duty. These are acts of official

misconduct—wilful and corrupt misconduct of a public officer, and they are the acts for which impeachment lies. The motive and intent is material to be inquired into. The senate has already adjudged that these *habeas corpus* proceedings, returnable before Judge Brooks, were admissible upon the question of the intent with which the governor acted throughout these transactions. This court has by its vote and by its decision declared that it was a material inquiry as to the motive and purpose by which the accused was actuated in doing what he has done. We objected to this proof as irrelevant. But it was insisted upon as competent by the honorable gentlemen associated with the managers upon the ground of its tendency to show the intent with which the other acts charged were done, and the chief justice with the assent of the senate, making it the judgment of the whole court, declared that those proceedings were competent upon the question of the intent with which the governor acted.

Again, if the gentlemen are correct in the position they now take, this cause has been prolonged very far and unnecessarily, for the answer admits nearly every fact which has been put in evidence during the course of the trial. The answer sets up the very defences which are now offered to be proved. If they are immaterial, why did not the honorable managers demand judgment without any further trial? When we admit almost all if not all the allegations that are contained in the articles, why did they not demand judgment at once? For if we are not to put in our justification for the acts which they charge as criminal, it was useless to take up the time of the court by making an inquiry into unimportant and trivial matters which, true or false, cannot avail the respondent on his trial. The respondent has set out in his answer the nature of the acts which he expected to give in evidence; he now proposes to make good that part of the answer, and we have gone to trial upon it. Why shall he not have the benefit by proving before this body the grounds upon which he exercised this power, for which he is now arraigned? If the senate shall believe, acting

as impartial and honest jurors and judges, that under the circumstances he was warranted in coming to the conclusion which he did, and that the contingency had arisen on which it was his duty to develop the military strength of the State to break up these organizations, then this senate will be reluctant, I am sure, to condemn him when senators see that under the circumstances he was warranted in his acts, though they may now think the state of things then existing was not such as he then supposed.

Mr. Chief Justice, we are before a court, not as manager Butler said, a senate, without a precedent except its own, without law except the laws which it made itself, rather indirectly sanctioned by my honorable friend on the other side, we are here in North Carolina before a court of justice, and nothing will be administered here but the justice of the state against any and all offenders.

Pending the remarks of Mr. Smith, Senator Flemming moved that the court take a recess for five minutes.

The CHIEF JUSTICE put the question on the motion of Senator Flemming, and it was decided in the affirmative.

On the court re-assembling, Mr. Smith resumed his remarks. He said:

Mr. Chief Justice, when the Senate took the recess I was about calling attention to what I regard as an unsound view of the attributes and powers that belong to this tribunal. Mr. Manager Butler uses this language in the opening address upon the trial of Andrew Johnson:

"A constitutional tribunal solely, you are bound by no law, "either statute or common, which may limit your constitu-"tional prerogative. You consult no precedent save those "of the law and custom of parliamentary bodies. You are a "law into yourselves, bound only, by the natural principles of "equity and justice, and that *salus populi suprema est lex.*

Mr. BADGER. Mr. Chief Justice, the argument which my associate is now addressing to the senate as a court of impeachment is one which is very important. It must be apparent

that there is scarcely a quorum of senators present. The question now being discussed is a vital question and it does seem to me that if the time is so far advanced in the day that the senators cannot be present, the time has come for the court to adjourn. I throw this out as a suggestion in the hope that some senator will move to adjourn the session for the day. I repeat that if the time has arrived when the senate of North Carolina sitting as a court of impeachment, is unwilling to hear what the counsel for the respondent have to say, it does seem to me that the time has arrived for the court to adjourn. I have not the power to make the motion myself. If senators should see fit to leave the chamber for their dinners or for any other purpose when counsel are proceeding with their argument, I think the counsel themselves ought to be permitted to go home until the time when the senators, who are to decide the question, shall come back to hear the conclusion of the argument.

Senator EDWARDS. Mr. Chief Justice, I have reason to believe that it would be agreeable to the managers as well as the counsel for the respondent to adjourn. I do not think the lecture comes very gracefully from the counsel for the respondent, but putting that aside, I move that the court now adjourn until seven o'clock.

SENATOR ROBBINS, of Rowan, moved as a substitute that the court adjourn for the day.

The CHIEF JUSTICE put the question on the motion of Senator Robbins, of Rowan, and it was decided in the affirmative.

So the court adjourned.

ELEVENTH DAY.

SENATE CHAMBER, Feb. 8th, 1871.

The COURT met at 11 o'clock, pursuant to adjournment, Honorable Richmond M. Pearson, chief justice of the supreme Court, in the chair.

Proceedings were opened by proclamation made in due form by the doorkeeper.

The CLERK called the roll of senators, and the following gentlemen were found to be present:

Messrs. Adams, Albright, Battle, Beasley, Bellamy, Brogden, Brown, Cook, Council, Cowles, Crowell, Currie, Dargan, Edwards, Eppes, Flemming, Flythe, Gilmer, Graham, of Alamance, Graham, of Orange, Hawkins, Hyman, Jones, King, Latham, Ledbetter, Lehman, Linney, Love, Mauney, McClammy, McCotter, Merrimon, Moore, Murphy, Norment, Olds, Price, Robbins, of Davidson, Robbins, of Rowan, Skinner, Speed, Troy, Waddell, Warren, Whiteside and Worth—45.

Senator TROY moved that the reading of the journal of yesterday be dispensed with.

The CHIEF JUSTICE put the question on the motion of senator Troy, and it was decided in the affirmative.

Mr. MERRIMON. Mr. Chief Justice, I desire to call attention to what may be a misprint in the evidence of Mr. Cocke which is to be found on page 280. As printed Colonel Cocke is made to say that he removed to Asheville in October, 1869; it should be 1865.

Senator WARREN. Mr. Chief Justice I would like to be indulged for a moment before the discussion is resumed. I do not wish to interfere at all with the line of argument which is to be followed on either side, but I would like to hear a discussion on this point, if the respective counsel think it material, whether any evidence of intent is admissible on this trial, and if so, whether the evidence offered tends to show the intent. I

do not allude to evidence referred to by the counsel for the respondent as to what they propose to prove hereafter, but only to the particular question now before the court.

Mr. SMITH. Mr. Chief Justice and Senators, I had nearly concluded what I had to say yesterday when the court adjourned and I would have trespassed on its time this morning by very brief remarks but for the suggestion which has been made by one of the senators in relation to a point which has perhaps not been adverted to in this discussion, and I will ask the indulgence of the court for a very short time while I say something upon it.

But before proceeding to that, I desire, as I am to be replied to by the learned counsel for the managers, [Mr. Graham,] to state that he may, understand the precise ground which is taken on the part of the respondent in relation to the admissibility of this evidence offered, bearing on the question of the rightful issue of the proclamation of insurrection as to the county of Alamance. The enquiry is as to the relevancy of the evidence offered to show the condition of things which existed. The statute authorizes the proclamation to be made by the governor, and we have offered the evidence to show a state of facts communicated to the governor as existing in that county, upon which, by the express terms of the statute, he was authorized to issue the proclamation; and, most undoubtedly, if all evidence in relation to the enquiry whether life and property were safe in the county of Alamance is to be rejected, then of course the defence will not be permitted to show the facts contemplated by the statute upon which the governor was authorized to declare a county in insurrection. We say further, that if we do satisfy the court that his act was within the reasonable exercise of his discretion (a discretion not colorable merely as in the case supposed, by the learned counsel who preceded me, [Mr. Bragg,] but exercised *bona fide* and truly, as authorized by the statute) upon the case then presented, and a judgment formed upon a fair consideration of the evidence, it is con-

clusive and protective in this and every other trial, and that the contrary doctrine that men are to be impeached and punished for errors of judgment, for mistakes of opinion, finds no countenance in any system of criminal jurisprudence known to civilized nations; and that the principle contended for by which the governor would be subject to punishment, would expel from the bench, by impeachment, every judge who should deliver an erroneous decision, and would drive from office every executive officer who, in an honest endeavor to discharge his duty, might commit mistakes or fall into errors of judgment.

All crime consists in the intent. There can be no crime without a guilty intent. Sometimes that intent is conclusively established by the act, upon the broad principle that a man must be supposed to contemplate that which is the natural and obvious result of his act—the intent to do that which he did do. But there is another class of offences, and this we submit is one of them, in which the intent is separate from the act, and is an essential element to be ascertained in order to constitute guilt; and the exercise of official power by an executive or judicial officer, to be the subject of punishment, must have been wilfully and corruptly and intentionally wrong, otherwise no crime has been committed. No judge can be deposed from his place for an error of judgment, although that error may result in a disregard of the requirements of the constitution. No officer of any description can be punished who honestly aims to discharge all his duty under the constitution and the laws which are supreme over him. The act of passing counterfeit money illustrate this idea; the act of false swearing, furnishes another instance which illustrates the same principle. The mere act of passing counterfeit money is not a crime; if so, no one would be free from guilt for all of us unquestionably have received and paid it out. False statements on oath are not punished merely as such. There must be a corrupt intent and a wilful false swearing to constitute perjury. There is no guilt, to be punished by a criminal

prosecution in the cases I have referred to, unless there is a criminal purpose and intent accompanying the act. In the case pending here, is an exercise of power, as we insist the evidence will show, if admitted, fully warranted by the language of the statute. If, upon exercising that power, there was an honest purpose on the part of the governor to accomplish the object which the legislature had in view in making the law, we maintain he has committed no crime, although the statute under which he acted, may be in violation of the rights of individuals secured under the constitution and laws of North Carolina. This was the view taken by the counsel for President Johnson, when the question of his violation of the tenure of office act was under consideration. The United States senate, I think most unjustly, refused to allow the accused to show that he took the opinion of the legal advisers of the president and among them Secretary Stanton himself, then a member of the cabinet, whose advice was to the effect that, the act infringed the constitutional prerogative of the executive office; and the testimony offered by him to show that there was no criminal purpose on his part to violate the constitution of the United States, but that he desired honestly and faithfully to obey its commands and to preserve unimpaired the attributes and prerogative of the office entrusted to him for the time being as its incumbent, was most unjustly I think rejected. I refer to the portion of the speech of one of his counsel to be found on page 169 of the second volume of the reported proceedings of the impeachment trial, remarking however, that in the speech are contained various quotations in support of the view taken by the counsel.

I read an extract from the speech of Mr. Nelson.

" " Every crime must have, necessarily, two constituent
" " parts, namely, an act forbidden by law and intention."

And that is as applicable, I take it, to a high misdemeanor as it is to a high crime.

" " The act is innocent or guilty, just as there was or was
" " not an intention to commit a crime; for example, a man

" " embarks on board a ship at New York for the purpose of
" " going to New Orleans; if he went with an intention to
" " perform a lawful act he is perfectly innocent; but if his
" " intention was to levy war against the United States, he is
" " guilty of an overt act of treason."

" Mr. Bishop, in his work on criminal law, section 252, says:

" " Intent is not always inferable from the act done." " I
" " maintain that, there being no unlawful or improper inten-
" " tion, there can be no crime or misdemeanor, and although
" " I did not read this yesterday, I substantially cited it; but
" " having it here, I ask your indulgence to repeat it again in
" " the language of the book itself. I refer to Wharton's
" " Criminal Law, page 733, and Roscoe's Criminal Evidence,
" " page 804, to sustain this proposition."

" " An indictment against an officer of justice for misbe-
" " haviour in office, must charge that the act was done with
" " corrupt, partial, malicious, or improper motives, and above
" " all, with a knowledge that it was wrong." "

" In Wharton, page 269, and 2 Russell, 732, this principle is
" stated:

" " As to acts of an official nature, everything is presumed to
" " to be rightfully done until the contrary appears." "

" Again, Mr. Bishop, in his criminal law, section 80, says:

" " A case of overwhelming necessity (as to intent) or honest
" " mistake of fact will be excepted out of a general statute." "

I read also the opinion pronounced by one of the judges of that court, who will not be charged with any partiality at least towards the president of the United States, Senator Sumner, of Massachusetts. Mr. Sumner said:

" From the form of procedure, I pass to the *rules of evi-*
" *dence;* and here again the senate must avoid all technicalities
" and not allow any artificial rule to shut out the truth. It
" would allow no such thing on the expulsion of a senator.
" How can it allow any such thing on the expulsion of a presi-
" dent? On this account I voted to admit all the evidence that
" was offered during the trial, believing, in the first place, that

"it ought to be heard and considered; and in the second place, "that, even if it were shut out from these proceedings, it could "not be shut out from the public or be shut out from history, "both of which must be the ultimate judges."

Senator Fowler in pronouncing his opinion uses this language:

"The simple act is not in law necessarily criminal; it must "be accompanied with a criminal purpose. *Actus non facit* "*reum, nisi meus sit rea.* Lord Kenyon says: 'It is a prin-"'ple of natural justice and of our law that the intent and the "'act must both concur to constitute the crime. The intent "itself is not punishable; indeed not the subject of human law. "It must accompany in some manner an act. *Cogitationis* "*paenvm nemo patitua.* 'The intent must also be proved as "alleged.'

"The proof both of fact and intent must establish the unlaw-"ful act, and also the criminal intent, as charged in the articles "exhibited."

Senator GRAHAM, of Orange. Without desiring to interrupt the counsel, Mr. Chief Justice, I should like to hear discussion on this point, whether, to show the intent with which the respondent committed the alleged act, we can admit evidence of what occurred before the passage of the act of January, 1870, known as the Shoffner bill, or whether we are not confined to such matters has occurred after that bill became a law.

Mr. SMITH. I will answer for myself to that point before I conclude.

I next read the opinion of senator Hendricks, then as now, a senator of the United States, and one of the judges in that case and a man of very high chrracter and position:

"I cannot concur in the opinion that has been expressed, "that if a technical violation of the law has been established, "the senate has no discretion, but must convict. I think the "senate may judge whether in the case a high crime or mis-"demeanor has been established, and whether in the name of

"the people the prosecution ought to be made and sustained."

Senator Grimes expresses himself thus:

"I come now to the question of intent: admitting that the "president had no power under the law to issue the order to "remove Mr. Stanton and appoint General Thomas secretary "for the department of war *ad interim*, did he issue those orders "with a manifest *intent* to violate the laws and 'the constitu-"tion of the United States,' as charged in the articles, or did "he issue them, as he says he did, with a view to have the "constitutionality of the tenure-of-office act judicially decided?"

Senator Doolittle who was also one of the judges, uses this language in giving his views:

"This opinion of the attorney general, if given and acted "upon in good faith by the president, is a protection against "any charge of high crime or high misdemeanor. The attor-"ney general is chosen because he is *learned in the law*, to "advise a president who may not be a lawyer at all. He is "confirmed by the senate as a judge is confirmed, for high "character and legal learning."

In that case, one of the charges against President Johnson was, that he had violated a law of the land. His defence was, that he had taken the advice of his counsel and his cabinet, and their opinion was, that the law infringed the constitution of the United States—the highest law—and infringed it in a manner which stripped the executive office of one of its essential attributes, that his purpose in the act of removal of his secretary, was to bring the case before the courts that the constitutionality of the law might be decided, and, meanwhile, not to surrender any of the just prerogatives of office entrusted to him to maintain and defend, under the solemnities of an oath for the time being as president of the United States. I am sustained in this view of the case further, by the fact that the honorable managers have not, in the common form of an indictment, contented themselves with leaving out the allegation of illegal and improper purposes which they charge existed in the mind of the accused, and for which they now arraign him

before the bar of this court. I will read a portion of one of the articles, for I believe the same language runs through all of them, so far as they relate to this part of the case. The article charges the corrupt and illegal intent in the following words:

"That William W. Holden, governor of said state, un-
"mindful of the high duties of his office, the obligation of his
"solemn oath of office, and the constitution and laws of said
"state, and intending to stir up civil war, and subvert per-
"sonal and public liberty, and the constitution and laws of
"said state and of the United States, and contriving and in-
"tending to humiliate and degrade the said state and the
"people thereof, and especially the people of the county of
"Alamance, and to provoke the people to wrath and violence,
"did, under color of his said office, on the seventh day of
"March, in the year of our Lord one thousand eight hundred
"and seventy, in said state, of his own false, corrupt and
"wicked mind and purpose, proclaim and declare that the
"county of Alamance, in said state, was in insurrection," &c.

Why is this corrupt intent imputed unless the honorable managers believe the establishment of it by proof was an essential element of the crime which the articles set out? The fact that they have put them there carries with it, to my mind, convincing proof that they believed, as we insist today, that the essential ingredient of the crime—an ingredient to be found to exist as a fact necessary to the conviction and deposition of the accused party from office—is something more than the mere issuing of a proclamation; and accordingly, they allege and they must prove that it was issued with the purposes and for the objects charged and set out in this portion of the article. And will senators upon their oaths, when they pass upon the accusation that the governor is guilty, after they have shut our mouths and not permitted us to repel the imputation of intents, find that intent to exist outside of the act of issuing the proclamation and refuse the accused the opportunity of showing his real intent and the absence of that purpose which the article

charges? They have made the charge and its truth is now to be ascertained before the senate. Proof must be competent by way of repelling as it is by way of establishing the truth of that part of the allegation; and I repeat as I said a little while ago it would be an unheard of proceeding and a dangerous precedent for the future to hold that a public officer honestly bent upon the discharge of his official duties should be deposed from office for an error in judgment.

Sir, when this unfortunate civil war, which lasted for four dreary years was coming on, the President of the United States resisted the execution of the writ of *habeas corpus* in the case of Merryman and directed the military officers not to obey the writ issued by the chief justice of the United States. No one dreamed of impeaching the President of the United States for that timely act, though wholly unwarranted by law, to preserve the government intact and the union of states unbroken, or for the many other acts put forth of extraordinary power while on the eve of civil war, though such power was not conferred or authorized by the constitution; and the country now accords him credit for his wise precaution and because of his patriotic intention of preserving the union. And yet the same reason which would depose, without reference to the purpose or intent the executive of this state from his position, would, had President Lincoln lived and continued in office, have been sufficient to expel him, by an impeachment from the presidency of the United States. His defence would have been that the great emergeney called for the exercise of extraordinary powers and that these powers were put forth not with the view of violating the laws of the land or constitution but to preserve the government; that there was no intent or purpose to break down the constitution or laws of the country But to preserve both by this extraordinary exercise of executive power. I do not mean to say any such exigency existed. in North Carolina as existed in the United States at large, when these illegal arrests were made by order of the president. But that principle by which the highest officer of the United

States would then have been justified against an impeachment, when he declared and the attending circumstances show that he had not willfully and corruptly exercised an undelegated power, is invoked as a defence for the governor of the state, when we insist and offer to prove the honesty and sincerity of his conduct, in using a power intended to be conferred upon him by the act of 1870. And that we hold he can be no more arraigned and convicted for the offence in this form of proceeding at least, than could the executive of the United States have been for the use of those extraordinary and unconstitutional powers which he put forth on that occasion. It is very true, sir, as the learned gentleman [Mr. Bragg] said, these great constitutional principles, by which every man is guaranteed in the protection of life and property, and our statute laws are intended for the government of our people in times of peace. But when great exigencies have arisen such as those which we have witnessed for some years passed, there has been brought into exercise in more instances than this, a higher power which the executive of a country and state possesses for the protection of the great fundamental rights of the people—personal security and liberty.

But, sir, I desire to say a few words in relation to another point. I stated yesterday, that while these gentlemen might be correct in the definitions they have given of insurrection, or riot, or treason, still they fall far short of a correct understanding of the comprehensive scope and purpose of this constitutional provision. It is true, of a man on trial for an offence, but whenever some great crime is premeditated and the means are furnished to an officer to put down and prevent that which, if accomplished, would become a great public calamity, the power to suppress the wrong, as we say, necessarily carries with it the right to repress it in its incipiency, to nip it in the bud, and prevent as well as break up and overcome an actual lawless resistance to authority. The constitutions of North Carolina and the United States are remarkably similar in respect to the provision for calling out the militia for certain objects. In the one

instance the power is invested in the governor of this state and in the other it is invested in the congress of the United States. It will be observed that power is conferred upon congress and delegated to the president by an act of congress "*to repel invasion* and *suppress insurrection*, and if the legal definitions of these offences is to control in the question which we are now considering, then the act of 1795 which undertakes to confer upon the president the power of repelling invasion, in one of its most important features was a clear violation of the constitution of the United States. That act provides:

"Whenever the United States shall be invaded, or be in "imminent danger of invasion from any foreign nation or Indian "tribe, it shall be lawful for the president of the United States "to call forth such number of the militia of the state or states "most convenient to the place of danger, or scene of action, as "he may judge necessary to repel such invasion, and to issue "his order for that purpose to such officer or officers of the "militia as he shall think proper."

The constitution uses no such language—"being in imminent danger"; it only authorizes the president to repel invasion. That statute in conferring further power went beyond the language of the constitution; yet looking at the end to be accomplished, it arms him with the power of calling out troops to upset a threatened and impending, as well as an actual invasion of our soil; and, sir, the supreme court of the United States held that act to be constitutional in the case of Martin against Mott, reported in 12 Wheaton, page 19. Mr. Chief Justice Story in delivering the opinion of the court uses the following language:

"It has not been denied here, that the act of 1795 is within "the constitutional authority of congress, or, that congress may "not lawfully provide for cases of imminent danger of invasion, "as well as for cases where an invasion has actually taken "place. In our opinion there is no ground for a doubt on this "point, even if it had been relied on, for the power to provide "for repelling invasions includes the power to provide against

"the attempt and danger of invasion, as the necessary and "proper means to effectuate that object. One of the best "means to repel invasion is to provide the requisite force for "action before the invader himself has reached the soil."

Carrying out then the principle by which it is held that a statute authorizing the military to be called out to repel a *threatened* iuvasion, was warranted by the provision of the constitution authorizing the president to call out the militia to repel invasion, we say here that the right to call out troops to suppress insurrection involves the right to repress and prevent insurrection which could be put down, such was the intention of the act of the legislature, and if it actually broke out. But if this were not so, surely the act under which this authority is exercised gives to the executive the right, under his judgment to be exercised upon such facts as might be laid before him—honestly exercised I admit—to place in Alamance county the militia, and preliminary thereto to pronounce the county to be in a state of insurrection.

One of the honorable senators has presented a question which I will answer upon the spur of the moment. He asked, if I understood him rightly, whether this inquiry should not be restricted to the state of things existing after the enactment of the Shoffner bill. I think, Mr. Chief Justice, that the act shows that the legislature then believed an evil to exist of the kind which these provisions were intended to remedy; that there were being committed in the state of North Carolina somewhere, these offences which are there denounced as criminal and for the suppression of which punishment is provided. Assuming this to be so, it seems to me that the enactment of that law is legitimate and proper to be considered for the purpose of showing what the state of things was when the governor made up his mind on the 7th day of March to issue his proclamation; and it would be extraordinary, sir, if those outrages existed previously and up to the time of that enactment and the governor followed it up soon after by issuing this proclamation,

we are to be restricted to the little interval of a few days or a few weeks, within which to show what offences had been committed to justify the exercise of the power which that act conferred. It seems to us that his judgment ought to have taken in the whole range of offenses with the view of arriving at a conclusion whether, at the time when the proclamation was issued, there existed that state of things which rendered life and property insecure, inasmuch as the proclamation is preliminary to the measures adopted with the intent to afford protection to life and property by the use of the means which that act authorized him, in such an event, to adopt.

There is one single technical view in this case to which I ask the attention of the court. The learned counsel for the managers [Mr. Graham,] took the ground that this question was asked prematurely and that the existance of illegal organizations must not be shown until after some overt acts of the illegal organizations have been proved. I will answer him by saying that the order of proof is always within the fair discretion of the court, and I cannot see why we should be compelled to begin at the last act of the drama rather than go to the source and trace out its results. If all this evidence together constitutes a state of things material for the court to know, I cannot see why it should make any essential difference where we begin, whether with the overt act and trace back from that to the source, or begin at the source and then come down to the overt act. But the answer is complete when I say that we are asking his witness a question on cross-examination, and for aught we know, we can prove nothing by him as to the acts of these illegal organizations. To rule the evidence out at this stage of the case would deprive us of it altogether. The witness on the stand is produced and examined by the prosecution and we have a right to extract from him any evidence material to our defence as set forth in the answer.

I have said more than I intended upon the important question which has been under consideration. We regard this as

a very material question to be passed upon by the court. Reject the evidence, and you may, by a majority vote deny to the minority of your body, greater than one-third, an opportunity to hear and consider evidence which that minority may deem material to a just decision when the last act is reached in the trial of the cause. I submit whether senators have not a right to hear this evidence, and whether it would be proper to prejudge the question of the guilt or innocence of the accused upon a preliminary point involving the rejection of a particular species of evidence. And I commend to the court that suggestion made in the progress of Andrew Johnson's trial, and which I read yesterday, to let this evidence come before the court. If it be no defence, it will not avail the respondent. If in law it does not protect him from the judgment of the court, then its admission will not accomplish the result for which it is offered; but if it is rejected—if it is not allowed to be heard—many senators believing it ought to be heard, (as was the case on the trial of Andrew Johnson, the larger number beyond the third voting steadily to admit this evidence and finally voting to acquit, perhaps considering the evidence rejected in even a stronger light than it would have been presented if had been admitted before them), an acquital may result here. Why should it be ruled out? The senate is a court made up of judges and jurors passing upon questions of law and questions of fact, and why should they deny to themselves the knowledge of any facts which may turn out, after a full and thorough argument of the cause on the merits on its final hearing to be material and essential to arrive at a just conclusion as to the guilt or innocence of the accused? You are a high court of justice—one of the highest known to the laws of our state—and a court from whose judgment no appeal can be taken. Your decision is final and irreversible. The judgments of the supreme court of this state may be revised in certain cases before the higher judicature of the United States; but the action of the senate of North Carolina sitting as a court of impeachment, on a question involving the official integrity of the highest execu-

tive officer of the state, is final and irreversible; and surely when so much depends upon a correct decision of a question of this magnitude we cannot do less than ask this body to accord the respondent the privilege of bringing to its consideration that evidence which in fact was before his own mind and upon which he did act and which is material upon the question of the intent with which he issued that proclamation for the issue of which it is now proposed to depose him from his office as the chief executive of the state and degrade him in the estimation of his fellow citizens.

Senator TROY. Mr. Chief Justice, I observe in the lobby the Honorable Samuel F. Cary, of Ohio. I move that he be invited to take a seat within the bar of this chamber.

The CHIEF JUSTICE put the question on the motion of Senator Troy and it is was decided in the affirmative.

The CHIEF JUSTICE appointed as a committee to wait upon Mr. Cary, Senators Troy, Worth and Fleming, who retired and conducted Mr. Cary to a seat by the side of the presiding officer.

Mr. GRAHAM. Mr. Chief Justice and senators, I shall endeavor to meet the argument which has been advanced, in a spirit of candor, and discuss the questions that have been raised so as to make them in my view intelligible to this court. I stated to you the other day that I thought, as this was an imputation upon the people of the county that an insurrection prevailed, it was necessary to show some overt act of insurrection, before any testimony could be introduced in relation to the accompanying circumstances. I think so now. I do not propose to elaborate the idea, but I beg leave to call your attention to the subject of insurrection and treason and to read a brief passage from a decision of Chief Justice Marshall on that subject in the case of Bolman and Swartwout. It is a subject, sir, calculated at all times, to bring into play the evil passions of men. In the division of a country into parties or factions, whenever an imputation is made that a man is not as faithful to the government as he should be, there will always be found

those of the opposite party who are ready to believe it at once. It is therefore necessary, for a court passing upon questions of this kind to disabuse its mind of all impressions derived from other sources, and to act upon the law and the evidence that is presented before them, in making a decision. On that subject I beg leave to call the attention of the court to a few remarks of that great jurist whom I have just mentioned and invoke his authority to sustain a position, which I think is impregnable, and that is, that there can be no insurrection against a government without an overt act. I read from page 36, 2 Curtis' Supreme Court Cases.

"As there is no crime which can more excite and agitate the "passions of men than treason, no charge demands more from "the tribunal before which it is made a deliberate and tempo-"rate inquiry, whether this inquiry be directed to the fact or "to the law, none can be more solemn, none more important "to the citizen or to the government: none can more affect "the safety of both.

"To prevent the impossibility of these calamities which result "from the extension of treason to offences of minor importance, "that great fundamental law which defines and limits the vari-"ous departments of our government has given a rule on the "subject both to the legislature and the courts of America, "which neither can be permitted to transcend.

"Treason against the United States shall consist only in "levying war against them, or in adhering to their enemies, "giving them aid and comfort."

"To constitute that specific crime for which the prisoners "now before the court have been committed, war must be actu-"ally levied against the United States. However flagitiou "may be the crime of conspiring to subvert by force the gov "ernment of our country, such conspiracy is not treason.

So that, in order to justify a proclamation like this, there mu have been treason, and in order to constitute treason, the must have been an open act of resistance.

But, sir, there are various other points of view, in which t'

evidence is not admissible. The issue between these parties is, that the respondent made a proclamation with a view to stir up civil war and to create strife and that he followed it up by an illegal military force and that he imprisoned a large number of the citizens of this state without warrant of law. He admits that he issued this proclamation and that he imprisoned these men, but he says he is justified or excused for the act. Sir, I contend that the evidence offered here is not pertinent either to show justification or excuse, any more than under an indictment for murder, it would be proper for the accused to show that he killed a bad man. The crime imputed is, that he violated the constitution and laws of the state, and that he did it intentionally and for a corrupt purpose, and that it is no excuse to show that the men whom he imprisoned were persons who did not deserve well of the country. Every man, even criminal in this country is under the protection of the law, and no officer is justified in denying him any privilege which is accorded to any other citizen. This protection is provided upon the supposition that these charges may be false as well as true, and that there may be Sidneys and Russells accused of treason as well as real traitors to their country; that there may be martyrs and patriots sacrificed to suit the behests of unjust and illegal rulers who deserve a better fate. I shall endeavor to meet the issue fairly, and to show that, if the state of things alleged by propounding the question be true, he was not justified in the illegal course he adopted.

The declaration of rights prefixed to the constitution of North Carolina, is intended for the security of the liberty of the citizen. It is intended not so much to secure an individual person from oppression by another as to prevent the rulers of the people from oppressing the people. Provisions abound on that subject—are found in many sections. They were read by my associate [Mr. Bragg] on yesterday, and I will not trouble the court by reciting them again. But there is, in my opinion, in the whole range of our learning, save the precepts of the decalogue and the max-

ims and parables of the New Testament, nothing which contains more sublime morality and more useful information than the axioms of liberty and justice announced in this declaration. They are in effect the legal sanction of the golden rule. They in substance proclaim that no man shall do to another except what he would that other should do him; and that, if any man invested with authority violates these great principles of ethics, he shall make atonement by loss of office, as well as be liable to further punishment according to law. To secure these great rights what has been done? The government has been divided into three departments, the legislative, the executive and the judicial; and what is charged against this respondent is, that he has usurped the judicial power; that he has not left the officers of the law to perform their duty, but has undertaken himself to decide that they are not executing their office, and has assumed their whole powers in two counties to himself. Now who constituted him a conservator of the peace? Who made him a judge? Who authorized him to arrest and imprison, and to refuse obedience to *habeas corpus*, and to try by a military court, and punish by its sentence, the freemen of this country? This matter of dealing with criminals, whether of high or low degree, is a judicial function which cannot be performed by any but judicial officers. It belongs to the judges and the magistrates of the state and does not pertain to the executive at all. The king of England himself cannot issue a warrant to arrest a citizen. In 2 Hale's Pleas of the Crown, page 37, it is said:

"Where a man is taken *per mandatum domini regis*, this is "not intended of the personal command of the king, for regu- "larly the king cannot in person arrest or imprison, but it "must be done by some order, writ or precept or process of "some of his courts."

So we have that ancient authority that the warrant of the king will not justify an arrest for treason. And although the king cannot be impeached, for "the king can do no wrong," yet the man who makes the arrest is a trespasser and is liable to be

dealt with upon indictment, and is amenable in a civil action for assault and battery. Is the governor of North Carolina superior to the king of Great Britain? Is he authorized upon his warrant in the form of a military order to direct a citizen to be arrested? We provide in the constitution that no man shall be arrested even upon a general warrant. The precept must specify the individual and it is issued only upon the affidavit of a responsible prosecutor. A magistrate's warrant or a warrant of a judge is the authority to make arrests in North Carolina, and though there are a few instances in which a private individual is permitted to arrest, in cases where a felony has been actually committed, they constitute exceptions not necessary to be noticed, in the argument in this case. And there is an exception in the case of the actual levying of war against the states and of dangerous riots. In these emergencies the military may make arrests, and deliver over the prisoners to the civil authority, as soon as order is restored, and the civil tribunals have control. But the general law of the land no more gives the governor the right to issue an order of arrest for an individual, than it gives it to a chimney-sweep. The constitution forbids that any man shall be arrested or desized of his liberties and imprisoned except by due process of law, issued by a judicial magistrate and by nobody else. This legislature cannot, by joint resolution, authorize the arrest of any one, save only for a contempt or breach of privilege, and the man who shall undertake to execute such a process, would be liable to be treated as an offender, who had no excuse at all. Nor can the legislature and the governor combined authorize any such thing. It is a judicial function entrusted to that department of the government; and any attempt on the part of the executive to exercise such a power is sheer usurpation. And when there has been resistance to the execution of process in the hands of a lawful officer, which it is not pretended has taken place here, it does not rest with the governor to bring in military aid, except in the last extremity. No, sir, the judicial department of this government is not

dependent upon the executive for the performance of its duties. It directs the sheriff at his peril to execute the process, and make the arrest; and he is in command of the physical force of his county to enable him to perform that duty. The governor is not to come in until there arises a greater emergency. If there was any object which the people of this country in the formation of our free institutions guarded with especial jealousy and care, it was the prevention of interference by military officers in civil affairs. The *posse comitatus*—the power of the country—the loyal citizens of every locality are the men upon whom the judiciary is to depend for the execution of its lawful commands. If these are tried and found inefficient, then the military may be called in for aid, and not till then; and when the military is thus called out, do they go as soldiers? They go as citizens. I wish I had here the life of Lord Mansfield containing his speech in parliament immediately after the great riot of London in 1780, in which his house and library were destroyed, and his person threatened, though not injured. He justifies the calling out of the military on that occasion. The spirit of freedom was as high in England then, as it ever has been in America. Complaint was made in parliament that the military should have been used to suppress the riot. Lord Mansfield, in a most impressive speech, declared that their interposition was justified by the imminent peril of the crisis. He said the military had been "called in—and very wisely called in—not as *soldiers* but as *citizens*," using these very words, and with the emphasis with which I have pronounced them. Thus he affirmed the doctrine I now assert, that the military when called in are to be put under the command of the sheriff or city police; and their officers, though retaining their authority over the men, took their orders from those civil functionaries. The idea that the commander-in-chief of the militia sitting in his office of state at the seat of government is to command the troops, and not only to make arrests but to keep men imprisoned beyond the reach of the law, is a device and invention of this respon-

dent alone. There is no semblance of authority for it in the law of England or of this country. During the administrations of Mr. Fillmore and Mr. Pierce, military aid was called for in order to enable the United States marshals to execute the law in reference to the rendition of fugitive slaves. You may examine the history of those events and you will not find a case in which the military officer did not place himself under the marshal as an auxilliary in the performance of duty. They did not assume to act as an independent power. This is a subject in which the American people are tender and justly so. I do not regret that this discussion has arisen, because upon its determination rests the question, by what tenure the people of this country hold their liberties: whether there is authority which has a right to arrest, imprison and try for crimes except the regular judicial officers of the country? If men go into the regular military service and make themselves soldiers, they voluntarily subject themselves to a different code. But even by the Articles of War in this country as well as by the Mutiny Act of Great Britain, no man is put under the orders of the military unless he has enlisted as a soldier and put on the livery of the army. So far is this carried in England that what is called the Mutiny Act, the law for the government of the army, is never allowed to continue in operation for more than twelve months at a time; and the soldier of Great Britain, whether he be at home or in the most distant parts of the globe, knows that the law under which he has surrendered his rights as a citizen, can exist only one year, unless re-enacted. And for what reason is this law annually passed like the appropriation bill providing moneys for the support of government? It is on the ground that the king, if he undertakes to do unlawful acts to subvert the liberties of the people, shall not have a standing army to accomplish it. The articles of war in this country are made permanent; but you find that no person is liable to be arrested by a military force, except in times of great public emergency, when the force opposed prevents the service of civil process; and in that case he must be delivered

over to the civil authority as soon as the exigency will allow, provided he be not a soldier, and be a citizen of the United States, and the courts of justice are open for the trial of criminals. The case of Major Andre could not have been tried by a military court, if he had been a citizen of the United States and not a soldier. His crime would have been treason, triable by a civil court. Articles of War provide that where citizens are found lurking about camps as spies they shall be arrested; if they are citizens of the United States they can only be punished, after conviction on indictment, for treason. We say that the spirit of the constitution and its positive directions have been violated in this instance, and have been violated persistently and contumaciously; that there has been an usurpation on the part of the governor of this state, of powers belonging to judicial magistracy: to himself issue orders of arrest: himself to determine upon the question of the commitment: himself to determine that the offenses shall not be heard before the judiciary. The people of this country view these proceedings with astonishment and horror, that a state of things should prevail, when there was no authority to enforce the laws except at the will of the governor; when a military force acting under his orders made arrests of the people by scores, without affidavit imputing crime, without any adjudication to determine whether there was probable cause, and even after the determination of these questions by himself, by force and with a strong hand, he would not permit them to be carried before the judicial officer to be dealt with as required by the laws of the land; but held his prisoners to be brought before a court which he himself had set up, and by which, he proposed to have them convicted and capitally punished.

I say, Mr. Chief Justice and senators, that here is a case of clear usurpation. The only instance in which the military can be allowed to be used in making arrests is when they are summoned by civil officers charged with a warrant, (I do not stop to notice a few exceptional cases—they have no application to this argument,) and then they are to come to the assistance of the

civil officer, and are under his command just as much as a citizen summoned from his store or his farm, to act in the *posse comitatus*. If the king's warrant does not justify an arrest in England, the governor's order cannot justify it here. They can only justify an arrest on the order of the governor where men are combined in arms and there is no ability in the civil authority at the time to execute process. These are the only cases in which the governor can have any pretence to arrest by virtue of military authority; for when the courts of justice are open there is in judgment of law a state of peace. In making this statement I don't speak without authority. No arrest can be justified by the order of the governor, except when bodies of men are in resistance to lawful arrests, and there is no civil force that can execute process.

The only cases in which the governor can pretend to arrest by virtue of military authority is, where there is a state of war. "For if the courts of justice are open, there is, in judgment of law, a state of peace." There is for this great principle the highest authority, Hale's Pleas of the Crown, page 347. In the Earl of Lancaster's case, it was ruled first "that in time of "peace no man could be put to death for treason, or other offense without being put to answer; and second" that regularly "when the king's courts are open it is a time of peace." And I say that the only instance in which either the king in England, or the executive in this state is authorized to make arrests, is in time of actual war, and the citizen arrested must be in a state of insurrection.

Well, what is that state of insurrection and war? There is a test upon this subject stamped with the approval of Lord Chief Justice Hale, two hundred years ago, and that of the supreme court of the United States within the last five years; and the doctrine laid down is, that which will bear to be repeated again, namely: "when the courts of justice are open there is, in nontemplation of law, a state of peace." I have repeated it thus often because I wish it to be grounded in the minds of the judges of this court that, when the king's courts are open in England and

when the courts of justice are open in the United States, it is in judgement of law, a time of peace. And the governor has no more right to arrest in such case, than any private citizen of the state: that is no right at all. A most remarkable instance occurred in England which is referred to in the report of *ex parte* Milligan in the supreme court of the United States. The Earl of Lancaster had made war against one of the princes of the house of York as early as the time of Edward III. He had an army of forty thousand men, but he was defeated and captured on the field of battle and was immediately tried by a military court and executed, and his estates were forfeited, of course, on the ground that he was a traitor. But, within eight years afterwards, when the public mind became more calm, the parliament of England met (and more vigilant and jealous guardians of the rights of the subject, never assembled any where, and the attainder was reversed—they could not restore the life of the dead Earl. But his estates were restored to his family. And why? Because the courts of justice were open at the time of his trial, and he was entitled to be tried for treason. And here, if there be any nervous people affected by the argument of the gentleman [Mr. Conigland,] who addressed the court yesterday, that this body will be held to approve acts of incendiarism and disloyalty, if it rejects this evidence; I refer to the case of the Earl of Lancaster. It was a case where eloquent declamation might insist that he was a traitor to the government, and that he ought to be put to death in the most summary and expeditious manner. But not so, says the law. Its framers knew that these charges are as often false as they are true; and whether true or false, when a citizen is captured in arms against the government, it is his birthright to be tried by a jury of his country: just as if a murder is committed in the presence of a judge; that judge would have no right to order the assassin to execution. He would be entitled to a jury trial and to have his guilt determined precisely as if the judge were elsewhere when the crime was com-

mitted, so that when a man is arraigned for an abuse of a political power, as in case of any other crime, the question is presented, what will the evidence offered avail him? Suppose there were men in the country who are suspected of being unfaithful to the government, what is the course to be pursued for their apprehension? To apply to a justice of the peace for a warrant, because these imputations may be false as they may be true. You must find, in the first place, some one who will swear to a state of facts that prove his acts within the catalogue of crime; and having done that, procure a warrant and cause him to be arrested. And if his friends combine in such a force, that the *posse comitatus* cannot arrest him, then the governor may interfere with the militia—and nothing else but the militia—by bringing it to the aid of the civil authorities and effecting the arrest. If such combinations existed in the county of Alamance it was not the function of the governor to capture them. The judicial authority, was the department for this service, and the governor had no excuse for superceding it, and assuming the office himself—by declaring the judicial power incompetent or ineffective—that is the plea by which tyrants at all times have endeavored to justify their usurpations of power.

But the case of Milligan is now the great authority in condemnation of the respondent on this head. Milligan was a citizen of the state of Indiana, and during the war he, with others, conspired to liberate the confederate prisoners who were confined in that State and to have the State of Indiana invaded by confederate troops. The military are not backward in assuming authority even when civil laws are in force and the military authorities arrested him, considering him a subject not to be dealt with by the ordinary courts. It was determined to send him before a military commission to atone for his crime. He was carried before a military commission and condemned to death. Then the circuit court of the United States in Indiana was invoked to relieve him. Here was another opportunity for fervent and impassioned eloquence, like

that we heard from the learned gentleman who opened this discussion on the other side, to appeal to the passions, to rouse the indignation of the public against the accused, and frighten the with the apprehension that if they dealt out justice to him according to law, they should be liable to the imputation of favoring a traitor, who deserved to be summarily executed. The question in that case was raised on a writ of *habeas corpus* and carried to the Supreme Court of the United States, where it was argued with an ability, on the part of the bar and the bench, which does honor to the legal profession in America. The case occupies one hundred and fifty pages of Wallace's Reports; and, sir, the principles of civil liberty secured to the citizens of this country are laid down by Mr. Justice Davis, who delivered the opinion of the court in a manner which will protect the people from usurpations of this kind for a long time to come. That decision had been made public before this respondent undertook his military expedition, and he ought to have known, and could have known if he had been disposed to respect the constitution, that he had no reasonable pretext for the atrocious oppression and injustice he was about to inflict on all the good citizens of the state in the counties of Alamance and Caswell. I shall detain the court to read some passages from that decision, and first from the head notes:

"Military commissions organized during the late civil war, in "a state not invaded and not engaged in rebellion, in which "the federal courts were open, and in the proper and unob-"structed exercise of their judicial functions, had no jurisdiction "to try, convict or sentence for any criminal offence, a citizen "who was neither a resident of a rebellious state, nor a prisoner "of war, nor a person in the military or naval service. And "congress could not invest them with any such power.

"The guaranty of trial by jury contained in the constitution "was intended for a state of war as well as a state of peace; "and is equally binding upon rulers and people, at all times "and under all circumstances."

That is a guarantee of freedom from trial by military courts,

but it will be seen at a glance, that it is equally a guarantee against military arrest in time of peace. For the right to trial by jury in one article of the constitution as amended by Mr. Madison's ten amendments is no more strongly secured than is the exemption from arrest, except by due process of law secured by another. Both of these are but copied from the constitution of North Carolina, adopted in 1776 and continue to this day.

But this extract from the head note, I beg to be engraven on the memories of senators.

"Neither the president, nor congress, nor the judiciary, can "disturb any of the safeguards of civil liberty incorporated "into the constitution, except so far as the right is given to "suspend in certain cases the privilege of the writ of *habeas* "*corpus*.

Yes, sir, under this great government of ours, extending over an empire from the Atlantic to the Pacific, the president, and congress and the judiciary all put together, cannot authorize a citizen who is not a soldier to be arrested by military means or tried by a military court in time of peace. They cannot authorize a man to be deprived of his liberty except upon the warrant of a judge or magistrate. If they attempt to authorize it, anybody exercising the power, thus sought to be conferred, is liable at his peril to atone for it in damages, and by indictment. Here is another principle:

"A citizen not connected with the military service and resi-"dent in a state where the courts are open and in the proper "exercise of jurisdiction cannot, when the privilege of the writ "of *habeas corpus* is suspended, be tried, convicted, or sentenced "otherwise than by the ordinary courts of law."

The decision is too long to be read now, but I commend the whole to the attention of senators who desire to inform themselves with reference to this question of personal liberty and to the younger members of the profession who wish to see the law of liberty as it exists in the United States laid down in the most unmistable manner. I will read extracts from the

decision to show the extent to which the supreme court of the United States have proclaimed the liberties of the citizen, on page 121.

"Time has proven the discernment of our ancestors; for even "these provisions, expressed in such plain English words, that "it would seem that the ingenuity of man could not evade them "are now after the lapse of more than seventy years, sought to "be avoided. These great and good men foresaw that troublous "times would arise, when rulers and people would become res-"tive under restraint, and seek by sharp and decisive measures "to accomplish, ends deemed just and proper; and that the prin-"ciples of constitutional liberty would be in peril, unless estab-"lished by irrepealable law. The history of the world had taught "them that what was done in the past might be attempted in "the future. The constitution of the United States is a law "for rulers and people, equally in war and in peace, and covers "with the shield of its protection all classes of men, at all "times, and under all circumstances. No doctrine, involving "more pernicious consequences, was ever invented by the wit "of man than that any of its provisions can be suspended during "any of the great exigencies of government. Such a doctrine "leads directly to anarchy or despotism, but the theory of "necessity on which it is based is false; for the government, "within the constitution has all the powers granted to it, which "are necessary to preserve its existence; as has been happily "proved by the result of the great effort to throw off its just "authority.

"Have any of the rights guaranted by the constitution been "violated in the case of Milligan? And if so, what are they?

"Every trial involves the exercise of judicial power; and "from what source did the military commission that tried him "derive their authority; certainly no part of the judicial power "of the country was conferred on them; because the constitu-"tion expressly vests it 'in one supreme court and such in-"ferior courts as the congress may from time to time ordain "and establish,' and it is not pretended that the commission

"was a court ordained and established by congress. They can-
"not justify on the mandate of the president; because he is
"controlled by law, and has his appropriate sphere of duty,
"which is to execute, not to make the laws; and there is no
"unwritten criminal code to which resort can be had as a
"source of jurisdiction."

"But it is said that the jurisdiction is complete under the
"'laws and usages of war.'

"It can serve no useful purpose to enquire what those laws
"and usages are, whence they originated, where found, and on
"whom they operate; they can never be applied to citizens in
"States which have upheld the authority of the government,
"and when the courts are open and their process unobtructed.
"This court has judicial knowledge that in Indiana the federal
"authority was always unopposed, and its courts always open
"to hear criminal accusations and redress grievances; and no
"usage of war could sanction a military trial there for any
"offence whatever of a citizen in civil life, in nowise connected
"with the military service.

"Congress could grant no such power; and to the honor
"of our national legislature be it said, it has never been pro-
"voked by the state of the country even to attempt its exercise,
"one of the plainest constitutional provisions was, therefore,
"infringed when Miligan was tried by a court not ordained and
"established by congress, and not composed of judges appointed
"during good behavior."

Again on page 124:

"It is claimed that martial law covers with its broad mantle
"the proceedings of the military commission. The proposition
"is this: that in a time of war the commander of an armed force
"(if, in his opinion, the exigencies of the country demand it,
"and of which he is to judge), has the power, within the lines
"of his military district, to suspend all civil rights and their
"remedies and subject citizens as well as soldiers to the rule of
"*his will;* and in the exercise of his lawful authority cannot be

"restrained, except by his superior officer or the President of the "United States.

"If this position is sound to the extent claimed, then when "war exists, foreign or domestic, and the country is sub-divided "into military departments for mere convenience, the com-"mander of one of them can, if he chooses, within his limits, "on the plea of necessity, with the approval of the executive, "substitute military force for the execution of the laws, and "punish all persons, as he thinks right and proper, without "fixed or certain rules.

"The statement of this proposition shows its importance; "for, if true, republican government is a failure, and there is "an end of liberty regulated by law. Martial law, established "on such a basis, destroys every guarantee of the constitution, "and effectually renders the 'military independent of, and "superior to the civil power'—the attempt to do which by the "king of Great Britain was deemed by our fathers such an "offence, that they assigned it to the world as one of the causes "which impelled them to declare their independence. Civil "liberty and this kind of martial law cannot endure together; "the antagonism is irreconcilable; and, in the conflict, one or "the other must perish.

"This nation, as experience has proved, cannot always re-"main at peace, and has no right to expect that it will always "have wise and humane rulers, sincerely attached to the "principles of the constitution, wicked men, ambitious of "power; with hatred of liberty and contempt of law, may fill "the place once occupied by Washington and Lincoln; and "if this right is conceded, and the calamities of war again "befall us, the dangers to human liberty are frightful to con-"template. If our fathers had failed to provide for just such "a contingency, they would have been false to the trust re-"posed in them. They knew—the history of the world told "them—the nation they were founding, be its existence short "or long, would be involved in war; how often or how long "continued, human foresight could not tell; and that unlim-

"ited power, wherever lodged at such a time was especially "hazardous to freemen. For this, and other equally mighty "reasons, they secured the inheritance they had fought to "maintain, by incorporating in a written constitution, the safe "guards which *time* had proved were essential to its preserva- "tion. Not one of these safeguards can the president or con- "gress, or the judiciary disturb, except the one concerning the "writ of *habeas corpus*.

"It is essential to the safety of every government that, in a "great crisis, like the one we have just passed through, there "should be a power somewhere of suspending the writ of "*habeas corpus*."

I next read from page 125,

"Martial law cannot arise from a *threatened* invasion. The "necessity must be actual and present; the invasion real, such "as effectually closes the courts, and deposes the civil adminis- "tration.

"It is difficult to see how the *safety* of the country required "martial law in Indiana. If any of her citizens were plotting "treason, the power of arrest could secure them, until the gov- "ernment was prepared for trial, when the courts were open "and ready to try them. It was as easy to protect witnesses "before a civil as a military tribunal."

And I beg Senators to remark that if there was any such state of insurrection or conspiracy or plot, as is alleged, in offering this evidence, it was as easy to have directed a civil court to try the offenders as a military court. And it was as easy to make arrests through the civil officers as by the so called State troops, latterly called the militia; and a great deal cheaper—yes sir, if an extra force was required (as it was not) the *posse comitatus*, would have been much more economical in the first place, and would have answered every purpose. Even if it had been necessary to make arrests of large numbers, or to give protection to the sessions of courts, which is wholly fabulous, a civil *posse* could have supplied the force as readily as the militia; and would

have claimed no participation in the deliberations and judgment of the court. But that does not seem to have been the object. If the purpose was to enforce the laws, there was no difficulty in procuring a state's warrant, having the parties against whom probable guilt could be shown by credible evidence, and at least bind to the peace and good behavior by proper articles—or send them to prison. That did not suit the executive views—nothing else but the military arrests and a military court suited him. The ocean must be tossed into a tempest "to waft a feather or to drown a fly" The great law of force must be brought into action and citizens must be arrested without warrants and without a fact being sworn to, to justify their being taken into custody. I again read from the opinion of Judge Davis:

"It follows, from what has been said on this subject, that "there are occasions when martial rule can be properly applied. "If, in foreign invasion or civil war, the courts are actually "closed, and it is impossible to administer criminal justice ac-"cording to law, *then*, on the theatre of active military opera-"tions, where war really prevails, there is a necessity to furnish "a substitute for the civil authority, thus overthrown, to pre-"serve the safety of the army and society; and as no power is "left but the military, it is allowed to govern by martial rule "until the laws can have their free course. As necessity cre-"ates the rule, so it limits its duration; for if this government is "continued *after* the courts are reinstated, it is a gross usur-"pation of power. Martial rule can never exist where the "courts are open, and in the proper and unobstructed exercise "of their jurisdiction."

I pass now over to page 128:

"We are not without precedents in English and American "history illustrating our views of this question; but it is hardly "necessary to make particular reference to them.

"From the first year of the reign of Edward III., when the "parliament of England reversed the attainder of the Earl of "Lancaster, because he could have been tried by the courts of

"the realm, and declared, 'that in time of peace no man ought "to be adjudged to death for treason or any other offence with-"out being arraigned and held to answer; and that regularly "when the king's courts are open, it is a time of peace in judg-"ment of law' down to the present day, martial law, as "claimed in this case, has been condemned by all respectable "English jurists as contrary to the fundamental laws of the "land, and subversive of the liberty of the subject."

I say, sir, that the court of impeachment has no right to go any further than to ascertain whether the courts of justice were open, in order to determine whether these prisoners could have been dealt with by any other than the civil power. When it is established that the courts of justice in this county are open, there is no power conferred upon the military to make any arrests at all upon the orders of a military officer—and when called to assist the civil officer, they cannot rightfully deprive a citizen of his liberty, except as they may act as a *posse comitatus*, in which case the civil officer—a sheriff for example—gives directions and is substituted for the commander-in-chief. I read further:

"During the present century, an instructive debate on this "question occurred in parliament, occasioned by the trial and "conviction by court-martial, at Demerara, of the Rev. John "Smith, a missionary to the negroes, on the alleged ground of "aiding and abetting a formidable rebellion in that calling." He was arrested to be tried by a military court, and died in prison.

There was a case where the declamation of my learned friend [Mr. Conigland] might have come in very handsomely, the case of the missionary who had gone to that colony in the course of his work and was arraigned and tried for inciting negroes to insurrection, and the military attempted to deal with him in true military fashion. But when the information came home to England the spirit of British freedom was aroused.

"Those eminent statesmen, Lord Broughman and Sir James "McIntosh, participated in that debate, and denounced the

"trial as illegal; because it did not appear that the courts of "law in Demerara could not try offenses, and that "when the "" laws can act, every other mode of punishing supposed crimes "" is itself an enormous crime." "

Yes sir, when the judges, in their respective states, and the magistrates, in their respective neighborhoods, are engaged in the preservation of the peace, and dispensing justice, no matter how black a man's crime may be, or how much blacker informers may attempt to make it, the effort to punish him otherwise than according to the civil law of the land, is an "enormous crime." That is the language of Sir James McIntosh and of Lord Brougham, and it is adopted in the opinion of the supreme court of the United States, by Mr. Justice Davis.

Then the opinion goes on to say, "that so sensitive were our "revolutionary fathers on this subject, although Boston was "almost in a state of seige when Gen. Gage issued his procla-"mation of martial law, they spoke of it as an attempt to super-"cede the course of the common law, and instead of these to "set up martial law; and the Virginia assembly also denounced "a similar measure on the part of Gov. Dunmore as an assumed "power which the king himself cannot exercise, because it "annuls the law of the land and introduces the most execrable "of all systems, martial law."

I could read other passages from this work, but I will not detain the court longer with this authority. I commend it to the attention of every senator who is trying this cause. I derive from it this instruction, that if the courts of justice be open as they have always been open in North Carolina, except in 1865, when we were in a transitional state, any attempt to interfere by military force, either to try to arrest, to punish men, or to keep them imprisoned and deprived of the remedies administered by civil magistrates is an enormous crime" and usurpation.

But, sir, the greatest offense after all, imputable to this respondent is the contempt which he casts upon the entire judicial establishment of this state. He undertakes to de-

termine that the judiciary is *effete*, that it does not answer the purpose of putting down insurrection in one or two counties; that the conservitors of the peace are not doing their duty, and that he must assume their neglected functions. Here is a force of seventeen judges and twelve solicitors and an attorney general, why has not some appeal been made to them? I will tell you why it is not. The informers who thronged the executive department and told their tales of crime and would not swear to them. They would not make affidavits, and the judicial courts could not be brought into play. The executive, in his new character of a judge, it seems, could be induced to take action upon the unsworn information of an informer or a spy; but there is no legitimate ground or a prosecution—no regard is had to the manly spirit of English law that no man shall be put in arrest until somebody shall make oath that he has committed some offence. That is totally disregarded. Judicial procedure is ignored; but the executive takes up the matter and acts upon such evidence, as suits him; substitutes military orders for state warrants, and proceeds to the arrest and imprisonment of peaceable citizens, by fifties if not by hundreds. It is a sublime spectacle in this country to see a warrant of a dozen lines signed by a magistrate, a mere justice of the peace, or a judge put into the hands of the sheriff or constable, who proceeds to the party against whom charges have been made, perhaps the most wealthy, popular or influential character in his county, and say "I arrest you by virtue of this process," and the man submits, as if it were the force of an army with banners. He is brought up before the magistrate and is examined; and if a probable case of crime be established, he is committed for trial unless he gives bail, and if the accusation is found to be false, he is discharged.

Sir, I say this was an attempt, on the part of the Executive, to usurp the entire judicial functions of North Carolina, and not merely to prevent the judges from exercising them within its limits, but to make himself, both judge and executioner. What has he to do with the administration of justice? His office is

created for a totally different purpose, and his interference with justice is that, after conviction and sentence of an offender, he may, upon satisfactory reasons, grant a pardon and prevent the sentence being carried into effect. But here he takes up the role at the beginning instead of the end, and undertakes, without any lawful proof, to declare who shall be arrested, how long imprisoned, by what kind of court he shall be tried, taking care to appoint all its members himself, under no law and to introduce new rules of proceeding and new modes of punishment, even to death. He treats all those holding judicial stations as imbeciles or poltroons, or worse, men who will not do their duty. But how can the judiciary act until somebody comes and makes an affidavit? They cannot act at all, even in a case of real guilt, unless somebody can be found who will prefer charges upon oath. But the respondent did not wait for that; he undertook to be judge and direct the whole proceeding from arrest and commitment to judgment and execution. After all the respondent's allegation in his answer about infidelity to the government, and a desire on the part of those who did not vote for him to overthrow it, or thwart its policy, the averments may be false, as probably as they may be true. To have the truth ascertained, the charge is brought before a judicial tribunal in the same way as a charge of murder, and is to be tried in the same way.

Mr. Chief Justice and Senators, these are no new doctrines with me. I am happy to find that my duty to the state in this prosecution corresponds with the sentiments I uttered when a different power prevailed in this state. In the convention of North Carolina in 1861, in the zeal to maintain the struggle then going on, to prevent any disaffection toward the Confederate States, or the harboring of sentiments favorable to the United States government, it was proposed to subject every citizen to a test oath, which was to be taken before a public officer under penalty of expulsion from the country. It originated in a zeal to maintain the cause, but, being in my view unconstitutional and unjust, I took occasion to ad-

dress the convention on the subject; I beg leave to read a few remarks then made not as authority, certainly, but as a statement of the argument perhaps more clear than I can make it in these extempore observations. I am happy to find the doctrine I then maintained, supported by the opinion of Mr. Chief Justice Davis, already quoted and delivered in subsequent years:

"But, Mr. President, the enormity of the proposition remains yet to be told. It violates every safeguard of personal freedom embodied in our bill of rights, most of which have been consecrated in the history of English liberty from the time of magna charta itself. The northern government became a despotism by usurpation. Pass this ordinance upon the old plea of tyrants, the necessity of the times, and the southern one, within the borders of North Carolina, will have become a despotism by legislation, whereas, our people are resolved to be independent and free, not only in the *end* but in the *means*. They are resolved, not only to be freemen at the termination of the contest, but will not surrender their liberties during its progress. Nor will they be satisfied until the flimsy pretexts and excuses for the sacrifice of a sacred principle, that it can do no harm except to traitors. They intend that even traitors shall not be condemned except in accordance with these great principles of right and justice, which are of universal application, for they know full well that it is upon the persons of friendless or odious men that despotism, whether of a single tyrant or of a mob, first lays its hands; and that vigilance is more necessary to the preservation of liberty in times of public peril and revolution, than in peace.

That language was concurred in by a majority of the convention in which passed the ordinance to separate from the federal government, and I am pleased to observe that Mr. Justice Davis, in the argument in the case of Milligin, among other instances of the government maintaining these rights of the citizen, refers to the fact that in the Southern States

during the rebellion, the writ of *habeas corpus* was suspended but for a short time, and that the constitutional privileges of the citizen were in no way abridged. And, sir, I consider, in the language of Mr. Black, in his argument in the case of Millignn, that times of war and excitement are the times to double the guards around the constitution. Sir, in times of excitement and party rage, and party malevolence, the hope of ascendancy and the preservation of power may induce men to forget, as they did in this case, induce this respondent to forget his inauguration oath to sustain the constitution—to maintain the *haheas corpus* and protect men from illegal arrests, and he himself to be guilty of these illegal arrests.

We had also a case in the legislature in 1862. A preacher of the gospel in the county of Orange was arrested by one of those persons called detectives on a sabbath day just as he had concluded the services in his church, and was carried off to Richmond. It became known to us here and I myself introduced a resolution requesting the Governor to correspond with the Secretary of war, and demand that Mr. Graves, the person departed, should be returned to his home. His arrest and deportation by a military order without trial or intimation to the state government was considered violative of the rights and dignity of the state, as well as a blow at the liberty of the citizen. The secretary of war politely surrendered the prisoner, and was brought back, examined before a competent commissioner and bound over to answer to a charge of treason at Richmond. That was the spirit of the North Carolina legislature *flagrante bello*. Though it was in the midst of a tremendous struggle our people would not allow a hair on the head of a private citizen to be rudely touched, except by warrant of law; and when we brought the matter to the attention of the government at Richmond, they gracefully made the amend, and sent the accused party here to be dealt with by the civil authorities.

It is not denied here that the civil courts in Alamance were open. The senate knows it as a public fact, independently of the proof which has been offered. Away, then, the pretext that the people

were in a state of war, for if this fact were true, it follows in judgment of law, the courts being open, that there was a state of peace. This court is not at liberty to disregard the adjudication that when the courts are open there is, in judgment of law, a state of peace. This being so, the executive had no right to interfere by military force with the people of Alamance and Caswell. It was an obtrusirn on his part into the province of the judiciary, undertaking to perform functions with which they alone are entrusted.

Thus, then, stands this matter upon the constitutional rights, duties and restrictions upon the executive department of the government of the state

I shall now endeavor to show that the act of 1870 furnishes no justification or excuse to the governor, and confers no military power that he did not possess under the constitution. I affirm that that act, and the proclamation made by virtue of it, did not deprive the people of any of their rights as citizens. It is a highly penal statute, according to the most lenient construction, and therefore is to be strictly construed. Its language is, that the governor is empowered, whenever, in his judgment, the civil authorities in any county are unable to protect its citizens in the enjoyment of life and property, to declare such county in a state of insurrection, and to call into service the militia, &c.; and by the second section, the judge is directed to remove the trial of indictments to any county the solicitor may designate. Now what is the authority of the governor, and how did his action in this case effect the people. He had authority to proclaim the county to be in a state of insurrection; but does the statute go on to enact that the inhabitants of the county shall thereafter be held to be insurgents? No! It does no such thing. I insist that without some positive direction that they shall thenceforward be treated as guilty insurgents, no such penal consequence can follow by construction.

The proclamation was a sharp rebuke, a public denunciation; and being levelled at a whole people innocent and

guilty, black and white, of either sex, old and young, the victims of alleged oppression, and their persecutors, putting all in the same condemnation, as a public admonition, it did great injustice to the peaceful and orderly part of the community, merely when operating to that extent. The proclamation therefore was similar to a papal bull, a severe reproof denounced on the people, but did not effect their rights of person or property—and ordinary charity to the Legislature rerequires that iterpretation. To contend that they designed to place the whole people in the state of convicted insurgents, so that his military might arrest, imprison and maltreat them at pleasure, is to suppose that they designed to tread the constitution under foot and authorize the cruelty of barbarians, and this by reason of an insurrection it might be not existing in fact,but proclaimed on paper by the governor. He is authorized to call out the militia to suppress "such insurrection." When we inquire what insurrection? the answer is that, which he has declared (and thus made) by his proclamation. When a statute is capable of two constructions, the one highly penal and the other not, or the one constitutional and the other not, it is proper to adopt that which is merciful and constitutional. The humane spirit of our law has carried this doctrine to great extent in favor of the life, liberty and personsal rights of the citizen. On indictments for theft or trading with slaves in former times, the distinctions, though legal and just, were calculated to excite a smile. Where a statute had declared it a crime to buy of a slave any "sheep, &c." a case occurred in which this was charged against the defendant; but on the proof it appeared that the animal had been butchered, and the carcass dressed for food, had been bought of the slave, and the defendant was acquitted, and properly, upon the ground that a citizen has a right to do any act not enacted into a crime, and to buy mutton of a slave had not been denounced as a crime. And can the people of a county, some 15,000 in number, be all placed beyond the protection of the great safe guards of personal liberty because the

legislature has authorized the governor to declare their county in a state of insurrection without more saying? Do the people hold their rights in classes and by counties? And are they to be indicted and punished in like manner? Did any member of this learned court ever hear of the indictment of a county, in which all the inhabitants were arraigned, convicted and sentenced, because some crime had been perpetrated in their county. It seems to me, that it would have been about as sensible to have empowered the governor to declare the county in a state of murder, arson, burglary or larceny as in a state of insurrection, which is only one other species of crime. The legislature has not said what shall be the effect of such a proclamation, no more than parliamentary law has provided what shall be the effect upon members if disorder is kept up after the mace is, by or of the presiding officer, taken from his side and carried down among them. In cases of great disorder, says the parliamentary law, when the speaker has called to order generally, then proceeded to call members to order by their names, his next final step is to order the mace to be carried among them and waived to and fro. But the oldest of parliamentarians have never been able to explain, what is to be done, if the body does not cease its confusion then he respondent would meet the tumult by calling out the military; parliament would consider that remedy worse than the disease. The proclamation then was only authorized as public reproof and warning; it was not allowed to the governor to authorize the despotic power of entering a county and taking military possession, seizing the peaceable inhabitants at his pleasure, without any evidence of guilt, known among civilized men, degrading men in the presence of their families, a circle in which every man is an object of respect and reverence tearing away husbands from their wives, sons from the side of their mothers and sisters, with a studied concealment of the charges against them, and leaving the worst doom to be imagined, as impending over them. It is respectful to the legislature to presume that they intended, by this obscure

statute, no such consequences as these. But if they did intend them, the penalties are so cruel, so savage, so obviously in conflict with almost every provision of the declaration of rights, that a fool could not err in seeing that they are utterly unconstitutional and void; and that the war which is admitted to have been made on them, is an attempt to seize a mere *frutum fulmen*, a power to lecture and to combine and convert it into a thunderbolt of war. Men are not responsible for crimes by counties, but each individual stands before our law as he will stand before his final Judge, each according to the deeds he has himself done; and it is a most astounding novelty in this age and country, that men are to be made criminals by vicinity to the place of crime; that because my neighbor, perhaps my best friend, has been the victim of assassination, I am to be denounced, and held out to the world as a suspected person, and even cast into prison without process or examination, and delivered over to the tender mercies of a military commission. The constitution was made and fought for by our fathers to prevent just such consequences as these. Study the history of our English and American liberty, and you will discover that all the careful and sublime provisions of the declaration of rights "were not to protect citizens so much as to protect the people against oppression by their rulers. It is war against imprisonment, by orders of the king, the privy counsellor, the cabinet minister or other public officers, that the acts of *habeas corpus* were designed to guard by imposing penalties on judges, by reason of which, neither party feeling, bribery, timidity, or other motive should induce them to refrain from issuing the writ. No provision of the constitution can permit the governor, by the breath of his nostrils or by the stroke of his pen to place those people *ex lex*—outside of the protection of the constitution and authorize a military tribunal to deal with them as if dealing with Indian savages on the frontiers. See the result of the contrary construction. It places the whole power of the State in the hands of the governor. Upon learning that the house of representatives is

about to impeach him, before the articles have been presented to the Senate, he declares the county of Wake in a state of insurrection; and on the next morning *a la mode* Louis Napoleon, his army of state troops under Kirk, seizes all the members of the general assembly and commits them to prison; and if the supreme court should not happen to be in accord with the author of the proclamation, he seizes them also; and the judges of the superior courts happening to have come up to the seat of government, he incarcerates them under the same set of guards. Would not this be an interesting spectacle? the legislative and judicial officers all in jail, and no one outside to issue writs of *habeas corpus* or other process for their relief? But the governor, with the prison keys in his pocket, is lord of the ascendant. The power to set over the people this French or Turkish despotism is a natural corollary from the construction of the statute in question, for which the respondent contends. An interpretation of a statute which leads to such results cannot be allowed upon any theory whatever; and if there be any other by which it may operate in consonance with the constitution this should be adopted.

The governor had power, under the constitution, to call out the militia to suppress riots and insurrections and repel invasion. The repetition of this authority, so far as regards insurrection, contains no new grant of power but the question of that as ordained by the constitution. And the governor will look in vain to that for any permission to treat any part of the people as those of Alamance and Caswell have been treated; and their treatment could not have been worse if they had been Comanche Indians. It was sheer usurpation when it was attempted to treat these people by an executive order, as if all were guilty of insurrection without ever having permitted to them the common rights of exemption from illegal arrest, examination before a magistrate and trial by jury. It was seizing the persons of men by military order who are accused of nothing except what is cognizable by the civil courts, and that not charged on affidavit. This is the conduct of the

chief executive officer of the state. He first denounces the whole people of two counties as guilty of insurrection when the charge was untrue, and then goes on to inflict on them imprisonment and other violence, and to prepare a military court to try and put them to death, in which procedure he was only brought to a pause by the writs of Judge Brooks.

If he can treat the people of Alamance and Caswell in that way, he can treat the officers of the government in all its departments, except his own, in like manner—try their nerves as he did those of these aggrieved people, by confinement, threatening and hanging, and let them out one or more at a time as they may confess or invent evidence, to be used and published to affect a pending election—or take the lives of those obnoxious to him, for any cause, personal or political. The securities of person, life and liberty can be taken away by no implication. If the legislature designed that *habeas corpus* should be suspended, that citizens may be arrested without warrant, denied the privilege of the writ of *habeas corpus*, kept in prison at the will of the governor, refused jury trial and tried by a military commission, and put to death, or otherwise punished by its sentence, let them say so in no doubtful terms. But if they did so intend, their enactment was entitled to no obedience or respect. It is not allowed to the legislature to take away from the citizen his interest in that declaration of rights, reaching back to magna charta, improved by the petition of right and the bill of rights of 1688, reaffirmed and enlarged in the American constitution; and that he should be permitted to annul these, and roll back the tide of time eight hundred years, relegate this generation to the vassalage of king John is a proposition too absurd to require refutation, whether it be claimed under the constitution or under the statute.

Neither case offered either justification or excuse, for the outrages which have been practised—the law of liberty as written in the declaration of rights is a law in large print; every one can read it. The statute is also clear on one point to-wit: that there should be a trial in the civil courts and that

the solicitor ought to remove the cases to any other county. But the governor intended that they should go where the solicitor had any jurisdiction over the subject. He never intended there should be any judicial proceedings or that the party arrested should have the right tc appeal to a court of justice. And yet it is contended, simply because of a man's vicinity, by reason of his living in a neighborhood where a crime has been committed, to make him a criminal; and because one or more in a population of some 16,000 souls, that being about the number in this county, has been guilty of crimes, to visit upon him penal consequences, to subject him to be worried by the military, if he be not shot upon the sentence of a drum head court martial.

The executive seems to have proceeded upon the idea that the military could ferret out offenders when the civil authorities could not. Where did he learn any such doctrine as that men with drums and muskets and glittering bayonets and uniforms and the paraphernalia of war were more likely to find out offenders and bring them to justice than men in civil life summoned by civil officers and acquainted with the country and its inhabitants? Did you ever hear of the military being employed for any such service aforetime? Did you ever hear of the doctrine that after the judicial officers of the government had failed to discover the authors of crime done in secret, there lay behind them the executive which could go out on the hunt of offenders? It is utterly repugnant to our system. If you cannot find out the real offenders in the mode appointed by law, you cannot punish men upon suspicion that they are offenders. The idea seems to have been that the judicial power had become utterly inefficient, and that the governor, by means of the military, had a talismanic power through prisons and instruments of corporal pain, to extort evidence from whomsoever be suspected, to invade any family circle, a scene where every man should be, and usually is, an object of homage and affection, and capture and bear off its head or its members, to be confined in a military camp, and there subjected to any torments that

his mercenary keepers may invent, to compel confessions of the guilt of himself or of others. It is the old doctrine of the application of the rack existing at the time of the star chamber, known to despotisms but utterly unknown to the common law any where. This was the ostensible purpose, putting on its best phrase, for which the military was called out. I say, sir, that if the fact will show that a combination existed in the county Alamance for the purpose of resisting the law or for the purpose of promoting objects hostile to the government, it would not justify an application of the rack, to torture men into confessions; whether that be, in the form of an arrest, suddenly, and without any previous notice, hurrying him from his family, leaving them perhaps unprovided with the necessaries of life, under a military guard, or keeping him imprisoned, in defiance of law, beyond the reach of the writ of *habeas corpus*, or threatening him with a military court that will make short work of him, as soon as it can be convened. I say that upon the question of intent, there is no evidence wanted further than you have it in the violent exercise of authority in seizing men, depriving them of their liberty and treating them as these have been treated. Such conduct is so outrageous and so wrongful, that no explanation of intent, can justify or mitigate it—whether it be claimed under the constitutional powers of the executive, or under the authority of the act of the General Assembly.

The respondent proposes to show by this evidence, that his conduct was a blunder—that he thought the legislature had authorized it. Talleyrand has said, "there are blunders which are worse than crimes." Those of the respondent, if they have any claim to that designation, are of this character. If Kirk and his men should come into this chamber and fire on the assemblage and kill some of its members, would he be allowed to say in extenuation of his offence, that he thought he had a right to do it in defence of the governor of the state, because he thought the governor was improperly impeached? That would be a greater atrocity, but it would be no greater violation of the bill of

rights than what he admits by his answer that he has done, by shooting down a person in open day. In such a case as this, where the offence is of so flagrant a nature, where the parties could have been proceeded against in spite of any interference, before the judicial department of the government, the question of intent is one incapable of being rebutted. The liberties of the citizens are as much under the protection of the law as their lives, and any act that wantonly deprives a person of his liberties is as much an offence, though not as enormous as if he were put to death without any judicial inquiry. I say, sir, that the intent of this respondent is a matter proven by the enormity of the crime so clearly that, if it were shown by evidence that there was such a combination in Alamance and Caswell, as is alleged, it would afford no justification for treating the inhabitants of a county in the manner he practised.

This proclamation was issued on the 7th day of March. What then? The sun rises and sets; the affairs of the country proceed in Alamance as they had done before. They contract and are contracted with; they marry and are given in marriage; all the functions of society are in full operation. The courts of justice and the magistrates courts are held, and everything goes on in accordance with the usual relations and a peaceful condition of society. One assassination, perhaps two, had taken place in secret, it is true; but similar crimes occur in other communities, and nobody thinks of proclaiming a whole county in a state of insurrection as a consequence. Thus things remained, down until June, when Kirk was sent for. Three months passed from the killing of Outlaw, (which was a terrible assassination; no good man, I feel assured, thinks otherwise of it,) when the power of the executive is put in motion for the purpose of accomplishing his ultimate purpose. A proclamation had been issued. What then? Were the people treated as inhabitants of a hostile country, with lines kept up and nobody allowed to go in or out? Was it an offence to trade with these enemies of the state by the people of any other part of the state? Not at all.

United States troops were there within a few days after Outlaw was killed and they remained there until after Kirk departed. But they don't answer the purpose of the executive. You cannot by means of them hang, or torture, or imprison, or drag the heads of families from their homes and frighten them into admissions against themselves, and to make allegations against others. The gallant armies of this country have been taught a different lesson. The real soldiers of this country and much more the officers who command them, know that is no way to keep the peace of the country to themselves become breakers of the peace. They know that they have no authority, even in case of actual or apprehended resistance to law except to follow the officers of civil justice in the execution of a process, put into his hands. If a riot occurs and there is difficulty in suppressing it and an insurrection arises, they may deal with it when they see it. But sir, this did not answer the purpose. This brigand of Tennessee and his army were the kind of force the executive wanted. They are to go and lay hold of people and inflict upon them tortures and threaten them with death. He intended to pursue a savage war by designating men and taking them just as he chose, and putting them in prison, detaining them and maltreating them at his pleasure. I say that if the facts which he alleges are true, and could be proven, they would be irrelevant, and would furnish no justification, no excuse, because the courts of justice being open there was a state of peace; if there was a state of peace there was an embargo on the executive not to interfere with the liberties of the citizen, with this great privilege of *habeas corpus*, and exemption from arrest except in a legal manner. I repeat what has been already said, that all these are not so much intended to protect men against men from being foully dealt with by each other, as to protect them against those in whose hands power is vested. If gentlemen will look into Blackstone, they will find it laid down that the great writ of *habeas corpus* was not so much devised to protect the subject against the king, the cabinet ministers and the privy

councils &c., as that it was to protect them against persons vested with power. If you look at the acts of suspension of the writs of *habeas corpus* in England which have taken place from time to time, you will find that it does not mean to turn loose the military upon the people like a wolf among the flocks of the shepherd. But they declare that if persons be arrested on the warrant of a cabinet minister, a privy counsellor or perhaps other officers, the privilege of the writ of *habeas corpus* shall not be allowed in such cases for a given time.

The governor of North Carolina had not, nor could have, any such suspension of the writ or grant of power to make arbitrary arrests. If there was such a combination, he had four months to trace it out, after issuing the proclamation, before he sent his troops. But that was not the drama that was to be enacted. This last tragic act was in contemplation at the time when the proclamation was first written. No other agency was to be allowed but state troops. No United States troops, though quartered at the court house during all these months, no *posse comitatus*, no judges, no justice of the peace, but the Kirk military must go two or three weeks before the election is to be held; and then the people are to be treated as if they were condemned felons, having no rights to be protected from inhumanity. Even a felon, if he is at large, may be arrested, but there is no power to maltreat him except to inflict the sentences of the law. The evidence offered may gratify the prurient curiosity; but it throws no light upon the question of the guilt or innocence of the respondent. If the provocation existed then as now, deal with it as the law directs. If any body thinks proper to institute proceedings as to the question of the man's guilt or innocence of committing a crime, it is his province to do so; but to proclaim a county in insurrection, and then seize citizens and put them in prison without authority of law, in my opinion there can be no pretence at justification or excuse to bring forward such proof as is now sought to be introduced.

The learned counsel who last addressed you [Mr. Smith]

says that the evidence ought to be admitted anyhow, because the respondent offers it, and that Mr. Sumner in the trial of President Johnson moved to admit all evidence. It is a sufficient reply to that suggestion to state that Mr. Sumner was not sustained in his views, and that his proposition was laid on the table immediately by a great majority of the Senate. I think that my friend wholly forgets his argument on last Saturday on the admission of the evidence we offered in regard to the declarations of Kirk on the hotel register. He then thought that we should be governed by the rules of law on the admissibility of the testimony. Now he says that great liberality should be shown on this subject and that the rules of evidence laid down by the courts ought not to be sustained here. We say, sir, that if evidence is not relevant to the issue between these parties, it ought not to be received. He says that Mr. Johnson, although the majority of the senate was opposed to him, was allowed to introduce evidence showing that he had exercised a certain power with the view to bring the question of his right to do so before the supreme court. But, sir, Mr. Johnson was acting in the line of his duty. He was exercising the executive power of the government of the United States. The president of the United States had had the power to remove at his pleasure any of his subordinate officers. Congress thought proper to say to him that he should not do it except under certain circumstances. The acts of President Johnson were those which appertained purely to the executive office. What this respondent was doing was usurping the office of the judiciary. He went outside of his duty in the exercise of the executive functions and undertook to supply the place of the judiciary where he thought they were not as active as they should be.

The counsel says that this case is like that of President Lincoln refusing to respond to the *habeas corpus* in the case of Merryman, issued by Chief Justice Taney. There is no parallel between the two cases. In that case there was public war between the two sections of the country. And within the

sphere of his powers, Mr. Lincoln declined to allow the civil process to be served. But here there was no war and no pretence of war. There were acts of secret crime liable to be dealt with if you could find out the perpetrators, just as any other crime was to be dealt with. Sir, this is not the first instance that a crime has been perpetrated and the offenders have eluded pursuit, and even evidence has failed to be produced against them. Look at the case which occurred in the most populous city in our great country. A man was put to death in the night time in his own house, and from that day to this nobody has been able to state who did it. There was a case where Governor Hoffman, of New York, might have with equal propriety declared the city of New York in a state of insurrection, and have ordered troops to the city and arrest citizens until somebody should disclose something about the perpetrators of that crime. But Gov. Hoffman properly chose to leave that matter to the judiciary. He knew that he was forbidden to interfere in any manner by the military power except there was an insurrection against public authority, and then only when it was found that a *posse* had not the power to arrest men who were charged with crime. There are other cases all over the civilized world where crimes have been committed in secret and the perpetrators have eluded detection and have escaped punishment. But this idea of proclaiming all the citizens of a county outlaws by an executive declaration and arresting citizens and denying them the ordinary privileges of a felon who is seen in the commission of an act, was left to be suggested by the governor of this state.

The learned counsel speaks of these acts of the executive as an error of judgment. This was a case so plain and palpable and so entirely outside of executive duty and power, that there could be no mistaking the fact that the military could not interfere for the purpose of ferreting out criminals which the civil authority had not ferreted out or had not been able to ferret out, for no application was ever made for a warrant against anybody before any judge or magistrate, and much less was the applica-

tion refused. The wrongs and outrages which were perpetrated in the county of Alamance, illustrates the state of society which always follows upon revolutions. It is but acting over again, except upon a more violent scale, the scenes which were perpetrated in England, in the times of Charles II and James II. The royal authority was subverted by Cromwell and the King put to death. Later there was a restoration of the dynasty of the Stuarts and Charles II was made king. Then there arose a system of espionage, and informers went about preferring accusations against men and they were arrested by the score and tried and convicted. But in those prosecutions the forms of law were conformed to, and men went before courts of justice with perjuries, and upon such testimony convictions were had and men were punished capitally. As Mr. Fox says it was "an age of good laws and bad government," for still the forms of the law were observed. Hundreds of men were charged with being enemies to the Protestant succession, who did not belong to the reigning party of the king and Titus Oates' and Bedloes and other informers whose infamy is shown up in all the histories of England came forward and preferred charges of "meal tub plots" and "rye house plots" and other incendiary proceedings designed to take away the attachment of the people for the government; and, sir, it is a blot upon the history of England which I have no doubt every Englishman would desire to have effaced. Such persons thronged the executive chamber here and with a credulous ear this respondent took their stories as if they were sworn evidence. In England they went through the forms of judicial proceedings by the issue of processes directed to the proper officers to execute, but our governor sent the military into the county to commit these outrages against the liberties of the citizen.

It is said Mr. Chief Justice that this is an important question. It is of not so much importance with reference to this trial as it is with reference to the tenure by which the people of this country hold their liberties. If such conduct as that of this respondent is to pass without a proper visitation of punishment,

then the liberties of this country are held by a very different tenure from what has been supposed. It is not to be regretted that this discussion has arisen, that this subject has been brought to the minds of the senators that that they may turn their attention to it in order to let it be known to the people of this state whether there are no guards for their liberties such as will prevent conduct like this. If there is not, they will soon take measures to endeavor to obtain them.

There has never been in this state such an outrage on the rights of the people, and really the plea of insanity would be a much better one to be interposed by the executive than the one which he has attempted to set up. I respectfully submit that this court will not receive the evidence, because it is not pertinent to the issue in this trial and that it will not be deterred from its duty by the idea that clamor may be raised that it will have been guilty of injustice in not allowing him to prove the facts which he offers.

Senator GRAHAM, of Orange. I suppose it will be agreeable to the presiding officer and to the court to take a recess for five minutes.

The CHIEF JUSTICE. If it would be agreeable to senators the presiding officer would prefer an adjournment at this time before delivering his decision, that he may look over some notes he has made, with the view of preparing a brief statement of his reasons. He supposes, also, that it will afford an opportunity to senators to reflect upon the question before being called upon to vote.

Senator DARGAN moved that the court adjourn.

Senator JONES. Mr. Chief Justice, I hope the senator ill withdraw his motion for a moment. I think there is a isapprehension in reference to which side has the right to e concluding argument. I am told by the counsel for the spondent that they claim the right to reply to the argument the counsel who has just concluded his remarks, and I am so informed that the counsel for the prosecution also claim the ght. I think that the discussion will be shortened by having

that matter settled now, and I hope it will be done before the court adjourns.

Senator GILMER. Mr. Chief Justice, I cordially join in the wish that the matter may be determined at the present time. I regard the question as purely one of law. Great latitude has been given in the argument and I hope if there is to be any more discussion it will be concluded to-day.

Mr. BOYDEN. This question, Mr. Chief Justice, arose on the trial of the president of the United States. The rules adopted for the government of this court gives the counsel for the prosecution the right to make the concluding argument on the final argument of the case, but we have no rule, as I understand it, touching this question which has been now raised. On the trial of President Johnson, the counsel who made the motion had the right invariably to close the argument upon it. That has been the rule invariably in the courts of North Carolina during forty-seven years that I have practised at the bar. I have never known the contrary. I know that it has been alleged on this trial that this court is "a law unto itself," and can make just such rules as it pleases; but I have the utmost confidence that senators will not act upon such a principle as that, but will give to the respondent the same rights that are accorded in all civil courts.

Mr. manager SPARROW. It seems to me, with all due deference, that the rule as stated by the counsel for the respondent, would operate differently from the way he claims. I do not understand that any motion has been made—certainly none by the other side. What are the facts? The managers have a witness upon the stand and on cross-examination, the counsel for the respondent asks him a question to which the counsel for the managers object. There is no motion at all, unless the objection interposed on behalf of the managers be regarded as a motion. Hence we claim to have the reply.

Mr. BOYDEN. Mr. Chief Justice, the honorable manager is entirely mistaken I think. We proposed to put a certain

question to the witness for him to answer, and the affirmative is with us. We offer; they object. It seems to me there cannot be a clearer principle of law.

The CHIEF JUSTICE. The presiding officer is of the opinion that the counsel for the respondent have the right to reply. It is well settled that whoever makes an affirmative proposition has the right to the conclusion in the argument. The only difference made by the Manager is as to whether the question which is objected to is equivalent to the motion. The presiding officer is of the opinion that it is to be regarded as such, and that the respondent's counsel are entitled to the reply.

Senator DARGAN withdrew his motion to adjourn.

Senator GRAHAM, of Orange, moved that the session this day be extended to half-past three to enable the argument upon the question pending, to be concluded.

A sufficient number seconding the motion, the Chief Justice put the question on the motion of Senator Graham, of Orange, and it was decided in the affirmative.

Senator NORMENT moved that the court adjourn.

A sufficient number seconding the motion, the Chief Justice put the question on the motion of Senator Norment, and it was decided in the negative.

Those who voted in the affirmative are: Messrs. Bellamy, Brogden, Cook, Council, Currie, Dargan, Eppes, Flemming, Hawkins, Hyman, McCotter, Moore, Norment, Olds. Yeas, 14.

Those who voted in the negative are: Messrs. Albright, Brown, Edwards, Gilmer, Graham of Alamance, Graham of Orange, Jones, Latham, Ledbetter, Linney, Mauney, McClammy, Merrimon, Murphy, Robbins of Davidson, Robbins of Rowan, Skinner, Troy, Waddell, Warren, Whiteside, Worth. Nays, 22.

Mr. BOYDEN. I listened with great pleasure to the eloquent argument of the gentleman who last addressed the court, (Mr. Graham,) upon those important principles incorporated in our bill of rights for the protection of life, liberty and prop-

erty of its citizens. It was a very eloquent argument and no doubt much time has been devoted to its preparation, but, Mr. Chief Justice, the only fault in that great and eloquent argument was, that it is aside of the question before the senate; and I will take this occasion to say that I think it was not fair for the gentleman to argue this point before the senate, as if upon a final argument of the cause. I think it was unfair to attempt to argue this time as if the whole testimony was in and endeavor, as I thought, to enable the senators to make up their minds upon the guilt or innocence of the respondent. That is not the question at all. Nor whether my client, the respondent, is guilty or not. He states what has been done, goes through all that testimony of the aggravating circumstances, and then says there is nothing in reply, and there is nothing that can be offered in reply. He starts out with the proposition stated at the opening of this argument, that no evidence can be given in this case until an open insurrection is established and he cites high authority, if it were at all applicable to this case, the opinion of Chief Justice Marshall, but, Mr. Chief Justice and senators, that is talking about the law when a person is on trial for the crime of treason, and has no application whatever to the case now before the court. So that however the law may be when the person is on trial for the crime of treason, certainly the gentleman ought to know it has no application here.

Mr. GRAHAM. Mr. Chief Justice, the gentleman is a little mistaken, it was on an application for bail in the case of Balman and Swartwout. It was not on Burr's trial.

Mr. BOYDEN. That does not alterthe question at all. It is where an individual is before the court charged with treason, whether before he is bound over, or whether he is before the jury, makes no manner of difference, as it seems to me, that every lawyer can well understand. So that the suggestion can have no influence upon the argument I am making. In this charge against my client they admit as it will be seen that under the constitution of North Carolina the governor of the state

"has power to call out the militia to execute the law, to sup-
"press riots or insurrection and to repel invasion."

Now, Mr. Chief Justice and senators, the whole argument of the gentleman went to show—if I can comprehend it—that there was no such power in North Carolina and that the militia could only be called out in aid of the civil authorities. That is the manner in which I understand the argument. I contend that that is not the law. Sir, all he said in favor of the writ of *habeas corpus*, that great and important right of the citizen, I concur with him fully, concur with him as to its importance, but that writ never runs to a section of the country declared in insurrection, and taken charge of by military power. That is the position which he laid down and I shall attempt to establish it by high authority and by the authority read by the gentleman in the case of *ex parte* Milligan.

In the first place I beg permission to read from Bishop's Commentaries on Criminal Law, commencing in the first book, chapter 4th, section 54, and concluding with section 68. I will begin with section 54, book I, chapter 4:

"If the reader will turn to the constitution, he will there
"see that the power conferred on the judges is "Judicial."
"It is not all the power of the government, but only the "ju-
"dicial power." Says the constitution: "The judicial power
"of the United States shall be vested in one supreme court,
"and in such inferior courts as the congress may from time
"to time ordain and establish."

"Now, here is no power of martial law, because martial law
"is not a thing pertaining to "judicial power." The United
"States courts cannot establish martial law, on the one hand;
"nor, on the other hand, can they overthrow or interfere with
"it in any way, if lawfully established by any other depart-
"ment of the government. Their "power," either for or
"against, does not extend to this matter.

"There are certain principles laid down in the constitution
"to guide the "judicial power." In some of the clauses ex-
"press words mention the "judicial" as the power to be

"graded; and, in others, the form of the language is such as "merely to point to this power alone. Of the latter, let the "fourth and fifth articles of the amendment serve as samples. "They are read consecutively, as follows: "The right of the "people to be secure in their persons, houses, papers and ef-"fects, against unreasonable searches and seizures, shall not "be violated, and no warrants shall issue but upon probable "cause, supported by oath or affirmation and particularly de-"scribing the place to be searched, and the persons or things "to be seized. No person shall be held to answer for a capital "or otherwise infamous crime, unless on presentment or in-"dictment of a grand jury, except in cases arising in the land "or naval forces, or in the militia, when in actual service in "time of war or public danger; nor shall any person be sub-"ject for the same offence to be twice put in jeopardy of life "or limb; nor shall be compelled in any criminal case to be a "witness against himself, nor be deprived of life, liberty or "property, without due process of law; nor shall private "property be taken for public use without just compensation." "Perhaps the last clause is properly construed, as it is by the "courts, to be a limitation upon the legislative as well as the "judicial power; and indeed the whole restrains the legisla-"ture from passing any act which shall command the courts "to violate, in their proceedings, the provisions thus laid "down. But these provisions have nothing to do with the "martial power of war, or with the law which this power "executes; and that this is so, the form of the expression just "as conclusively shows as if the precise words of limitation "were used.

"It is obvious that if no man could, by the war-arm of the "government, be put to death, or be deprived of his liberty, "until first he had been indicted by a grand jury and found "guilty by a petit jury, we should make as a nation but a poor "headway in martial affairs; and in fact, the restriction would "be tantamount to a prohibition of all war. Then, if by looking "into other parts of the constitution, we find war to be a thing

"provided for in it, we are to draw the general conclusion, that "the particular provisions of the constitution which do not "point expressly or by clear intendment to this matter of war "are meant to be regulations for the civil branches of the gov-"ernment in matters pertaining to peace, and that they have "no reference to war or to martial law.

"We have already seen, that by the constitution, congress is "to make rules and articles of war, and the president is to be "commander-in-chief of the army and navy, so the congress "has power "to declare war," "to raise and support armies," ""to provide and maintain a navy," "to provide for calling "forth the militia to execute the laws of the union, suppress "insurrections, and repel invasions," and, among other things, ""to make all laws which shall be necessary and proper for "carrying into execution the foregoing powers." "Congress "has made the needfull laws, in pursuance of this latter clause, "and they apply both to the suppression of insurrection at "home, and to the repelling of invasions from abroad, and it "is not always imperative, to justify an exercise of war power, "that there should be a declaration of war by congress?

"The president, having this power put into his hands, takes "the oath to "preserve, protect and defend the constitution of "the United States." In another clause, he is enjoined to ""take care that the laws be faithfully executed." It is obvious "that the word "laws," in this connection, does not have "any restrictive meaning; it is plural in its form, and, if it "were singular, it would not be restrictive; it applies, not "alone, perhaps not primarily, to the laws administered by "the "judicial power," the judges, to whom they are expressly "committed, being ordinarily competent to execute these laws; "but it applies, in an especial manner to the law martial, which "is executed by the military forces whereof he is the comman-"der-in-chief. If by reason of insurrection or rebellion at "home, or invasion from abroad, there comes a disturbance "which the civil power cannot or will not suppress, he is bound

"to call into action this power of war, carrying with it the law, "martial.

"In circumstances like these, and in all other circumstances, "the president, if he wants advice concerning his duty, or con- "cerning the meaning of the constitution, or an act of congress, "or concerning anything else, is to apply not to the judges, "but to the proper cabinet officer." "He may require," says the constitution, "the opinion, in writing, of the principal "officer in each of the executive departments, upon any subject "relating to the duties of their respective offices. It is not, "therefore, for the judges to advise him of the time or the "necessity for calling out the military force of the country to "execute the law of war, or law-martial; but, as he is to act, "and to be responsible in this matter, the duty of judging de- "volves upon him; and, if he wishes advice, he is to take it, "not from them, but from his cabinet officers. And, this "being so, it is impossible for the courts to limit him as to the "space over which, within the country, the martial law of the "army and navy shall operate.

"Let not the proposition of the last sentence be misunder- "stood: the president may do wrong, may commit a violation "of law, by extending the sphere of martial law too widely, or "by causing the weight of this law to fall too heavily; but, "under our constitution, it is not for the judicial power "to exercise the restraint. If the judges should attempt it, "they could not execute their decree without calling upon the "military power; but this power is, by the constitution and the "laws, controlled, in these circumstances,—that is, when it is "used for purposes of war,—by the president, and he cannot "command the power to operate against himself. When, in a "time of peace, a judge calls for a military force to act as a "*posse* to carry out some decree he has made, or to protect the "officers of his tribunal, the case is entirely different: there, "the president is not asked to employ the military force against "himself.

"These views—which are intended to be but an outline of

"'the matter—would be found practically imperfect were we not
"'to consider a clause of the constiiution which is sometimes
"'quoted in the connection; it is: 'the privilege of the writ
"'of *habeas corpus* shall not be suspended, unless when in case
"'of rebellion or invasion the public safety may require it.'
"'Now the principal use of a *habeas corpus* writ, and its great
"' value, is, that, by it, when a man is imprisoned, he may have
"' the lawfulness of his imprisonment looked into at once, with-
"'out awaiting the other slower processes of the law. It is a
"' writ which can be used only where the judicial power has
"' jurisdiction. If a party is held by military arrest, under the
"' law martial, that is, as a prisoner of war,—the judicial tribu-
"' nals, even, it seems to the writer, by the common law as
"' brought to this country from England, would have no juris-
"' diction to proceed in the case by *habeas corpus*, much less has
"' the 'judicial power' any such authority under our constitu-
"' tion, wherein the different functions of the government are
"' intrusted to separate departments with accurately enumerated
"' powers, acting independently of one another.

"The writ of *habeas corpus*, therefore, is a judicial process;
"' it is an arm of "the judicialpower." And the judicial power
"' cannot be controlled by the president; it is controlled only
"' by congress, and in the way of legislation. In pursuance of
"' the plain intimation contained in the clause of the constitution
"' quoted, congress, by legislation, has authorized the courts to
"' make use of this writ as one of their processes. And it is not
"' easy to see how the president, who has no legislative power
"' within himself alone, can suspend an act of congress; for this
"' is as much a legislative function as was that which brought it
"' into being. Nor, as we have seen, is this necessary, or in any
"' degree desirable in any case where martial power of war is
"' called into action. The suspension, contemplated by the con-
"' stitution, may be useful in some circumstances or localities
"' where the full martial power is not called out, and where
"' congress authorizes arrests in the way of civil proceedings,
"' yet when it may not be prudent to have a public examination

"of the matter, on an application for the discharge of a prisoner, "until the case comes on regularly for trial. But the bare sug-"gestion that, to suspend the writ of *habeas corpus*, even by an "act of congress, will justify an arrest which would not other-"wise belawful, is a monstrosity in jurisprudence; and in morals, "it is of the ethics of the thief, who holds himself justifiable if "he can but escape the pursuing constable.

"Thus we have traced, with some care, the thread of judicial "argument through the various constitutional provisions upon "which the question of martial law under our government "depends. It was not deemed necessary to cite, in the notes, "all the crude utterances which have fallen from judges and "from legislators on this subject. This is one of those questions "of constitutional law which the author expects to unfold more "fully, in another connection, hereafter.

"It may be here said, however, that, though the constitu-"tional provisions relating to this subject, are, when fully ex-"amined, plain enough, it is very difficult to tell the truth upon "it without subjecting one's self to being misunderstood. This "matter has been bandied about in politics, and each reader is "seeking to know whether the author belongs to this party or "to that, and he is ready to approve or disapprove, according "as he likes or dislikes the answer to this question. Yet, in "the present case, the author belongs neither to this or to that "party; but he is one of those few persons who hold truth to "be superior to party, and who seeks it alone, without asking "or caring whether it pleases one party or another.

"The reader, therefore, may suppress his surprise at finding, "that the foregoing views are not the views of any political "party; being, instead, the views of the constitution of "the land. If he is told that they accord to the presi-"dent great power in time of rebellion or other war, the "author's answer is, that he did not make the constitution. If "he is told, that, assuming these views to be correct, the gov-"ernment of this country is not the weak thing which he has "often heard it represented to be, but is, on the other hand,

"one of the strongest governments in the world, his reply
"that not he, but the Higher wisdom which inspired our fo
"fathers when they framed our national constitution, ordai
"this matter. If it is still objected that not even the queer
"England has such power of martial law, as according to
"foregoing views has the president of the United States,
"answer to this objection is, that it it may be so, or may n
"but, whatever be the power of the English queen, she deri
"it from the English constitution, while our president deri
"it is from the American. It has, indeed, been assumed in t
"chapter, that the common law of England is the common l
"of this country; but where our constitution is distinct, as
"is on this matter, it, and not the common law must prev
"moreover we shall see, in the proper place, that according
"the highest judicial authority in this country,—an autho
"which we are all bound to respect, though the doctrine as l
"down doubtless requires some limitation,—there is no co
"mon law of the United States in distinction from the seve
"states."

"But it should allay our apprehensions to know, that the p
"er of the president, in respect to martial law, is of no hig
"character than in judicial matters, is exercised by our court
"law throughout the country. If the president may proc
"wrongfully, so may a judge. If he may commit an error
"may the highest judges of the land. If a judge may be
"peached, so equally may be the president. If the judg
"bound to proceed, in civil affairs, according to judicial law
"is the president, in martial affairs, bound to proceed accord
"to the law martial. If it is in the power of the president
"ruin a man by violating the law-martial; so also it is in
"power of the judge to do the same thing by violating
"judicial law. If, from an interior judge, there lies an ap
"to a superior; so also does there from an order of an infe
"military officer to the president. If there are instances
"which an inferior military officer may do a wrong wl
"cannot find practical redress; so likewise there are, in wl

"an inferior judge may do a wrong which cannot be redressed "by application above. In short, the difference between mar- "tial law and the law of civil tribunals is, that the one is "adapted to suppress what the other cannot, in a time of re- "bellion or other war; while the other is adapted to a condi- "tion of pure peace. And let us not complain when we find "our constitution to have embodied a wisdom suited to all the "emergencies of a nation."

And as further authority on this point I quote from the opinion of Chief Justice Chase in *ex parte* Milligan.

"There are under the constitution three kinds of military "jurisdiction, one to be exercised both in peace and war, "another to be exercised in time of foreign war without the "boundaries of the United States, or in time of rebellion and "civil was within states or districts occupied by rebels treated "as belligerents; and a third to be exercised in time of inva- "sion or insurrection within the limits of the United States or "during rebellion within the limits of states maintaining "adhesion to the national government, when the public danger "requires its exercise. The first of these may be called juris- "diction under *military law*, and is found in the acts of con- "gress prescribing rules and articles of war, or otherwise pro- "viding for the government of the national forces; the second "may be distinguished as military government, superseding, "as far as may be deemed expedient, the local law, and exer- "cised by the military commander under the direction of the "president, with the express or implied sanction of congress; "while the third may be denominated *martial law proper*, and "is called into action by congress, or temporarily, when the "action of congress cannot be invited, and in the case of justify- "ing or excusing peril, by the president, in times of insurrec- "tion or invasion, or of civil or foreign war, within districts or "localities where ordinary law no longer adequately secures "public safety and private rights.

"We think that the power of congress, in such times and in "such localities, to authorize trials for crimes against the secu-

"rity and safety of the national forces, may be derived from its "constitutional authority to raise and support armies and to "declare war, if not from its constitutional authority to provide "for governing the national forces.

"We have no apprehension that this power, under our "American system of government, in which all official authori-"ty is derived from the people, and exercised under direct "responsibility to the people, is more likely to be abused than "the power to regulate commerce, or the power to borrow "money." 4th Wallace, page 141, Boyden 1.

There, Mr. Chief Justice, it is laid down expressly that there are three kinds of military law; there is that for governing the militia in ordinary times of peace. I need not recur to that nor to the next one but there is this other military law called as such as any part of the civil law, by which the president not without the power of congress, has the right to proceed to put down invasion or insurrection by calling out the militia. I mean the strict legal right. But, sir, it requires no act of North Carolina, no act of the legislature to authorize the governor to do the same thing, which congress can authorize the president to do. But in our case it seems that the governor was unwilling to act without the authority of the people, as expressed through their legislature, and therefore he refused to act, no matter how great the difficulty in such an emergency as this unless the people of North Carolina through their representatives in their legislature would authorize him to do so. Then what is the question now before this honorable court? It is not what constitutes treason. That is not the question. It is the question here purely as to motive, for it is laid down in the law books as every lawyer knows. I have a citation from Roscoe, where he says: "every crime must have two constituent parts, namely an act forbidden by law and an intention."

Senator EDWARDS moved that the session be extended indefinitely in order to allow the argument of the counsel to be completed.

A sufficient number seconding the motion,

The CHIEF JUSTICE put the question on the motion of Senator Edwards, and it was decided in the affirmative.

Mr. BOYDEN. Mr. Chief Justice and senators, the question which we propounded is upon the question of motive; I trust every senator will understand that it is upon the question of motive, the motive which induced the governor to issue this proclamtion; that is what we are upon. It is not a question which has been argued heretofore and at such great length by the counsel for the prosecution, whether there was an insurrection or not. That is not the question, the only question is touching the motive of the governor. What do we say upon that? Why, sir, in the first place we have to reply that none of our evidence is before this high court yet. We have not come to the time when we could offer it, and yet the case is argued on the other side as if upon the final argument. I have furnished me the annual cyclopædia of 1861, to a passage from which I beg leave to call the attention of the court:

"A writ of *habeas corpus* was also issued by Judge Garri-
"son of Brooklyn, N. Y., and served upon the officer in charge
"of the prisoners at Fort Lafayette, commanding that one of
"them should be brought before him, but without any success.

"The declarations of the government coincide with the
"evidence of these facts.

"On the 5th of July, Attorney General Bates prepared an
"opinion, at the request of the president, on the suspension of
"the privilege of the writ of *habeas corpus*. He commences
"his opinion with these words:

"Sir, you have required my opinion in writing upon the fol-
"lowing questions:

"1. In the present time of a great and dangerous insurrec-
"tion, has the president the discretionary power to cause to be
"arrested and held in custody persons known to have criminal
"intercourse with the insurgents, or persons against whom
"there is probable cause for suspicion of such criminal
"complicity.

"2. In such cases of arrest, is the president justified in refusing "to obey a writ of *habeas corpus* issued by a court or a judge, "requiring him or his agent to produce the body of the pris- "oner, and show the cause of his caption and detention, to be "adjudged and disposed of by such court or judge?

"Both questions were answered in the affirmative by the "attorney general. The basis of his argument is in these "words:

"To make my answer to these questions at once consistent "and plain, I find it convenient to advert to the great principle "of government as recognized and acted upon in most, if not "all the countries of Europe, and to mark the difference "between that principle and the great principle which lies at "the bottom of our national government.

"Unity of power is the great principle recognized in Eu- "rope; but a plan of "checks and balances," forming separate "departments of government, and giving to each department "separate and limited powers, has been adopted here. These "departments are co-ordinate and co-equal; that is, neither "being sovereign, each is independent in its sphere, and not "subordinate to the others, either of them or both of them "together. If one of the three is allowed to determine the "extent of its own powers, and that of the other two, that one "can in fact control the whole government, and has become "sovereign. The same identical question may come up legit- "imately before each one of the three departments, and be "determined in three different ways, and each decision stand "irrevocable, binding upon the parties to each case, for the "simple reason that the departments are co-ordinate, and "there is no ordained legal superior with power to revise and "reverse their decision. To say that the departments of our "government are co-ordinate, is to say that the judgment of "one of them is not binding upon the other two, as to the "arguments and principles involved in the judgement. This "independence of the departments being proved, and the "executive being the active one, bound by oath to perform

"certain duties, he must be, therefore, of necessity, the sole "judge, both of the exigency which requires him to act, and of "the manner which it is most prudent for him to employ the "powers intrusted to him, to enable him to discharge his consti-"tutional and legal duty. Such is the outline of the prelimi-"naries upon which this opinion rests."

Mr. CHIEF JUSTICE that authority shows exactly what your honor decided in the *habeas corpus* cases in North Carolina, and this is decided by Judge Bond in the *habeas corpus* case of Burgen.

The governor in this case is to act upon his judgment of the circumstances, and if he acts fairly and honestly upon what he believes to be the true state of the case, he is to be justified here before this tribunal whatever may be the justification of the governor in any matter which may call up these questions hereafter between the governor and the individual. I say then, there can be no question, as I understand the law, that if the governor has acted honestly and *bona fide* in this matter, he must go acquitted.

Well sir, what is the testimony offered? What do we say? We allege that when we come to offer our testimony we shall be able to prove that in the county of Alamance the lives and property of the citizens were entirely insecure, and although the courts were open there, as has been proved, and although outrage after outrage, murder after murder, scourging after scourging, mutilation after mutilation, whippings innumerable, at any rate, to the amount of eighty cases which we expect to show. Eighty cases in the county of Alamance and yet although they say the courts were open, and although these outrages were public and notorious, scarcely a citizen in the county of Alamance but what knew it; yet when the courts met no presentments were made, no indictments were found; not a human being engaged in these assassinations was brought before the courts.

I ask this learned court and every man who hears me if that does not show that the arm of civil power was completely par-

alized and that no matter what offences were committed upon the lives or property of the citizens of Alamance, no man could be brought to justice, and we expect to show to this high court why they could not. We allege that these very officers in that county, the sheriff, the constables, grand juries and the juries that were summoned by him belonged to his vile organization, and that it was perfectly idle and futile to attempt the prosecution of any man there. No bill could be found. No attention whatever was paid to these horrible deeds.

Now what we contend is this, that if what I allege is true, and more can be shown to be true, I will ask senators if with the Shoffner act before my client he had not a right to suppose that he was permitted to issue this proclamation. But, sir, that it was a high duty and instead of being impeached for performing that duty, if he had let the thing go on, and murder and assassination and mutilation and scourgings were running riot and the respondent to take no notice of these offences and not exercise his power; why he had every right to suppose that that would be an impeachable offence, and that for that he might be impeached and deprived of his office.

I say then, Mr. Chief Justice and senators, it does seem to me that if any question is clear, it is clear that we have a right to this testimony. The gentleman says no, we have no right to this testimony and we have no right to prove any part of these facts which I have stated. Why? Because, says the counsel for the managers, there was no open rebellion, no resistance to peace officers of the country. No sir, and there could be no resistance. They say they never called for assistance. No, sir, they never did. They were in these vile organizations. They looked on complaisantly if they did not engage in them themselves. They issued no warrants, they took no steps. It is said, though, why have you not gone out of the county, why have you not applied to some judicial magistrate or judge. We shall be able to answer that, if we are permitted to offer our testimony; such was the power of this organization in the county of Almance, that any man who made complaint did it at the peril of his life.

How came Puryear murdered and drowned. What do we expect to show you in that case? Why, sir, that this poor half witted colored man saw Outlaw hung in the town of Graham, and he was simple enough to mention that fact. Then what?

This organization heard that he had said he had seen it and knew several ot the men, and then his house is entered in the night time, he taken from his wife and children, dragged off at a distance, a large rock tied to his feet, and plunged in the deep water and drowned. I say we expect to show all that if we are permitted to, and we expect to show there was no hope of redress from the civil authorities, and any attempt to seek redress resulted in the scourging or in the death of any one who attempted to inform against this organization in that county, consisting, as we expect to show, of more than half, if not more than two thirds of the legal white voters of the county of Alamance.

Now the governor had seen that this had gone on from day to day, from month to month. It is true he had the power to call out the militia, but how did he act? With great prudence. He issued his proclamation; he calls upon citizens to aid him that he might not have to resort to extreme measures. He calls upon the citizens of Alamance to hold public meetings and to use this kind of influence to stop this iniquitous course. He calls upon his political adversaries, and emplores them to ride over the country and make speeches to relieve him of the dire necessity of being compelled to declare the county of Alamance to be in a state of insurrection. He waits and waits and waits. These iniquities cease not, this vile organization progresses day after day until at last—and that speaks language which no man can misunderstand, every senator must know that it was unsafe for any body to make complaint there.

They had a senator, Shoffner, in the legislature of North Carolina and he introduced that bill to which we have alluded, for the purpose of heading off and putting an end to these outrages of these organizations, and what do we expect to prove touching that? We shall establish beyond all controversy, no

doubt about that, that one of these organizations in their camps decreed the death of Senator Shoffner. They decided that he must be executed, and, sir, we shall show that a parcel of this band of assassins fifteen or twenty in number started to execute this vile deed of darkness; and how was it prevented, as we expect to show? We expect to show that one man who was a member of this very organization, happened to be a personal friend of Shoffner, he was informed of the decree against his life, and being his friend, we expect to show he prevailed upon him to leave the county of Alamance and go to Greensboro' on the day or rather the night before he was to be executed, and we expect to show the interference of another man belonging to this same organization; that he heard it, and he started on the direction that they are to come and he meets the men armed and moving forward to execute Shoffner; they are informed that he was not at home, that he was not in the county, and they retire.

Now, Mr. Chief Justice and senators, is it not idle, is it not farcical that gentlemen should get up here and say that because the courts were open, because they held courts there which took no notice whatever of these transactions, they indicted no man, they punished no man, they imprisoned no man, every man's life if he became at all obnoxious to this vile organization, his life was in peril. If he had been scourged, if he named it he was put to death or scourged again. I say then can any senator declare, can any senator vote that all this testimony tending to show the motive of the governor is to be excluded, because these vile deeds were done in secret in the dead hour of the night, and with persons disguised so that no man could tell them even in the day time. I trust senators all understand this question. It is offered merely as to motive.

Now, sir, if the respondent's motive is good, if the county of Alamance was in the condition, as we expect to show the court it was, and that the respondent expected to stop it by this process, then he must go acquitted.

But what do the gentlemen say here now in the last argu-

ment? Why they say that he intended to try these men by court martial and execute them. Have we got to that point? Is that the question which we are arguing? No, sir, when this testimony is closed, when we have laid before this high court the testimony we allege, and when they show that he arrested A, B, C and D, who are men of good character, men who had no connection with this matter, then another question will arise. But we have not come to that yet. The counsel who last addressed you has argued this question as if the evidence were all in, and contends that there is no justification for the governor whatever. I shall contend for the principle that when a county or a particular neighborhood with circumscribed boundaries is declared to be in a state of insurrection, a writ of *habeas corpus* does not run there. The chief justice had no right to issue a writ to such sections. Instead of his stopping short of his duty in refusing to issue writs of *habeas corpus* he issued these writs of *habeas corpus* when he had no right to issue them. Sir, what was declared? That the county of Alamance was in a state of insurrection, and martial law controlled the county. In whose name does this writ run? In the name of the state. Who is commander in-chief of the state? The governor. He had declared the county to be in a state of insurrection and had put it under military power, and then they ask the chief justice as they have done, to issue his writ of *habeas corpus*, to go and endeavor to overcome the military force which had possession of the county of Alamance. That proposition is utterly absurd. Sir, I understood the proposition was made before the court when the argument was going on in the *habeas corpus* cases, that although the governor was commander-in-chief of the military, all the able bodied men within certain ages were under the command of the governor. The chief justice, it was insisted could issue a writ of *habeas corpus* to the old men and the women and children to execute it. It would make a nice parade against a military force—women going with writs of a civil court with children in their arms to overcome a military force. It would bring on a glorious state

of things. But that is what your honor was asked to do. No man has a higher regard for all these principles of the constitution and for the writ of *habeas corpus* than myself, but I say they are to be exercised in times of war and that is the most important time in which they are ever called in requisition. I have always held this, and I hold it to-day, that notwithstanding I hold that doctrine, I hold the other doctrine, that that applies to all places where the civil power has the authority, and that this writ runs into all counties where the civil authority has control, but it runs into no county—it runs into no locality where the country has been declared in insurrection and is in possession of the military. They execute and control and govern that county while that proclamation exists. Sir, here we have the authority of the legislature for this proceeding. Why, what took place during the rebellion. Did not president Lincoln, before the suspension of the writ, have the legislature of Maryland seized? Were not numerous individuals seized before the writ of *habeas corpus* was suspended? For what did he do it? does any man doubt? Yes, I entertain no question but that many here doubt it, doubt that he did it from any pure motive to protect the life and the liberties of the country. I doubt not there are those who entertain the same opinion of the president of the United States for executing these high authorities which congress had not authorized, that now entertain the opinion against the respondent, that it was out of the worst of motives that he did those acts after the legislature had authorized him and as I say commanded him to do it.

Will any senator contend that in the month of April, 1869, while General Sherman had military possession of a large portion of North Carolina, and held in his military custody a private citizen of North Carolina, that any judge of the courts of the United States had a right to issue the civil writ of *habeas corpus*, and direct a civil officer to take this private citizen out of the military custody of General Sherman? I think no lawyer will hazard such an opinion. And in this case would the

great principles of liberty incorporated in the amendments to the constitution of the United States be violated? If not, why? Because the country was under military control. Just so was Alamance in legal contemplation after the proclamation of the governor declaring the county of Alamance in a state of insurrection, and all persons in that county were in legal contemplation insurgents, however innocent and unoffending their conduct. I am now speaking of the strict law of the case; and for this decision I refer to Mrs. Alexander's cotton case in Wallace's Supreme Court Reports, vol. 4, page 404 and the authorities therein cited by the chief justice.

So that in all these cases, the motive is the very turning point of the case.

The gentleman who last addressed the court thinks this matter of no sort of consequence and he supposes a very extreme case. Those suppositions can always be made and they have the effect to startle timid minds. How was it here, was there any ground for declaring this county of Wake in a state of insurrection? It was not so declared. He might have declared it if these facts had existed that would authorize it as they did in Alamance but if he had declared it, sir, then this question of motive we come up as to those here, but if it were shown that he did it with the view to seize the members of the legislature and the court and prevent his impeachment, then this high court would impeach him because he would have abused his power, would have done this out of bad motives and those motives would have been shown and he would have been convicted. But suppose another case; suppose a large majority of the members of the house and a large majority of the Senators and all the judges were interested, and it was understood they were on the eve of the rising of an insurrection to overthrow the established authorities of the state and this had come to his knowledge. Then he would have a right to take steps to prevent it. Putting extreme cases can have no weight before this high court. It would be a case where he would be undoubtedly guilty if he did as was sup-

posed by the learned counsel when there was no ground for his acts; but surely if he did that and he alleged by way of defense that all these authorities had entered into a conspiracy to overthrow the present government and that he was able to prove it, then the evidence would be heard and if the fact was established by it that would justify him even in the extreme case stated.

It was said by the learned counsel in one of his arguments that if Gov. Holden was justified in issuing this proclamation on account of the disturbed condition of affairs in Alamance, then Gov. Hoffman would have been justified in declaring the city of New York in insurrection on account of the the murder of Nathans. I am surprised that such a proposition should be stated. It is stated upon the assumed ground that all we can say is that certain individuals were murdered in Alamance county, that certain others were scourged and certain others mutilated. They leave out the main point in the case. They say not one word about the proposition which we have stated and which we expected to prove, to-wit: that the White Brotherhood had banded together and taken the most solemn oaths that they would resist all amendments to the constitution of the United States and all amendments to the constitution of North Carolina since the war, save that of the emancipation of slaves, that they would have nothing to do with the colored people and would do all they could to deprive them of their rights at all hazards. That is what we allege and what we expect to prove. Then as to the "Constitutional Union Guard" we expect, if we are permitted to do so, to prove that its members had also taken the most solemn oaths to guard the constitution of the United States as it existed before any of the recent amendments, save that of the emancipation of the slaves, and that they had sworn to resist all the amendments to the constitution of North Carolina save that which gave the slaves their freedom. Expecting as we do to prove these facts, will this high court in the discharge of its judicial functions say that we are not permitted to show a combination of more than one half of the white

voters of Almanace to resist and overthrow these high provisions of the constitution and that this was aimed at a particular class of citizens, either the colored race or those individuals who have operated on their side of political questions and have attempted to aid in carrying out the recent provisions of the constitution of the State?

That, sir, is what we allege. They say that we begin at the wrong end and hence what we offer cannot be admitted.

Now, Mr. Chief Justice, I ask every lawyer who is a member of the senate if it was ever heard of in North Carolina whenever a man was on his defense and the state called witnesses to prove his guilt, the defendant was ever stopped from calling out from that witness any testimony which he thought would tend to exculpate him? Was it ever said that before you can ask that question you must introduce your testimony and prove a certain point which is necessary in the case, but you cannot ask your adversary's witness what he knew; such a proposition would shock the common sense of every lawyer in North Carolina. I venture to say that no lawyer will get up here and say that such a thing ever occurred in his practice. We say that we think that we can establish some part of our defense by this witness called on behalf of the managers. The gentleman says no—it is beginning at the wrong end; and, sir, what is the usual course in the courts of North Carolina, when the defendant introduces his own testimony? I have had some experience in that matter, and I see many gentlemen in this court who have had a large experience also, and I appeal to them to know what is the practice? Sir, if the counsel for the defendant, or the counsel for the prosecution, wish to call out a fact which a particular witness knows, and it is necessary that a certain other fact shall be established before the one they desire to prove can be made available, the invariable course is when the gentlemen making the proposition assure the court that these other facts will be proven, to admit the testimony offered, with the understanding that it is to be ruled out unless the condition is fulfilled of proving the

fact necessary to make the one evidence. The court says, we relying on the statement of counsel that he will be able to prove the other matters, permit him to begin his case as he thinks proper. More especially when they begin in the chronological order as we propose here; first, the organization of these secret illegal political societies, and trace them down from their organization to their powerful influence in upsetting the whole civil authority of the country. The course is always that unless counsel establish this other testimony required the fact first proven, which otherwise would be irrelevant, shall be withdrawn from the proofs.

But what is the condition if when we get the witness on the stand and suppose he is a very unwilling witness, and we have just got at the point in which he can tell a material fact and counsel object, and he retires to consider upon the fact until we shall call him in our behalf, and he comes prepared? Would the court submit to such a thing as that? No sir, when a witness is on the stand for the prosecution, the defendant is at liberty to call out every fact which he thinks will have any tendency to prove his case, and I think there is no lawyer in this high court who can state a solitary case where in defending his client he was stopped from calling out any fact that his adversary's witness knew, and certainly if other facts were not proven the one he sought would be of no avail. Such a thing has never occurred in my practice.

I say that therefore, according to all the rules of law, it does not make the slightest difference whether this Shoffner act was constitutional or unconstitutional, this testimony is competent.

I have had some intimation that some senators desire the question to be argued whether there is any distinction between treason and insurrection because our constitution provides what shall constitute treason, and that if insurrection and treason in all cases are perfectly synonymous terms, then this Shoffner act would be unconstitutional because the constitution defines treason and of course, the terms being equivalent, defines insur-

rection. Permit me to say in response to the inquiry that it was admitted by one of the learned counsel (Mr. Merrimon) who addressed this court, that there was a distinction between treason and insurrection and to show that, various authorities were cited.

My learned associate, I believe, stated the law that was passed in New York during the administration of that great statesman Silas Wright, whose authority would be regarded as very high wherever courts of law are held. That was an act very similar to this one, which has been animadverted upon by the learned counsel, and it provided that where these disturbances existed in the county, the governor might declare the county in insurrection, &c. This act was passed in the year 1846, and it was expressly denominated an insurrection act. Under that act Silas Wright, then governor of the state of New York, and one of the distinguished lawyers, declared the county of Delaware in a state of insurrection, and the conditions there were not to be compared with those in the county of Alamance in this state. To be sure they were somewhat difficult, but they had not gone that length they had in Alamance county; it entirely paralized the civil power, but in Alamance there has been no protection for the lives or property of the colored race, or even of the white race who maintained the position of insisting upon an enforcement of the reconstruction acts or amendments of the constitution of the United States and of the state of North Carolina, awarding to the colored people political rights. I say, then, we do not have to go to England to find out what is insurrection, we need only go to the great state of New York for a precedent which will fully justify the course taken by the executive of the state of North Carolina. I do not wish to prolong this argument. I have evdeavored as far as in my power to confine the argument to the question before this court, as to the admissibility of the testimony offered, and it does seem to me that if any legal proposition can be established, my associates who previously addressed this learned body have fully established it, and I think there is nothing stated in the

eloquent speech of the counsel for the managers which has answered the proposition which they laid down.

Mr. BRAGG. Mr. Chief Justice, I do not rise to enter into a discussion of the question which has been pending, for that I consider closed. But, at the request of the managers, I desire to bring before the presiding officer of this body a matter which they consider of moment in settling the course of business here, as to how far, under the law which applies to trials of this kind, the chief justice can go in announcing the decision that he may make. As this is the first time that point has been debated, we think it is proper to bring the matter fully before the body.

It was intimated that the chief justice was about to prepare an opinion to deliver upon the question which has been under discussion. It is contended on the part of the managers that the presiding officer can only announce his opinion for or against any proposition to submit evidence here, and that after that decision is made, it must be submitted to by the body or they can, on the call of one-fifth of the members present, have a decision by a vote of the Senate—not exactly in the form in which the presiding officer has put the question heretofore, of sustaining the decision of the chair, but as the decision of the court. I understand that to be the force of the law. I believe that on the trial of President Johnson before the senate of the United States, the chief justice, in no one instance delivered an opinion on any matter brought before the senate sitting as the court of impeachment, but in every instance where he did decide it was simply a statemant of his decision. In some instances he preferred to leave the matter to the judgment of the body.

Sub-division 4 of section 5 of the act concerning proceedings of impeachment prescribes as one of the powers of the presiding officer "to decide in the first instance without a division, all "questions of evidence and incidental questions—but the same "shall, on demand of one-fifth of the members present be "decided by the yeas and nays."

The corresponding rule of the senate of the United States

on the trial of President Johnson was rule 7, and as it was finally perfected, it read as follows:

"The presiding officer of the senate shall direct all necessary "preparations in the senate chamber, and the presiding officer "of the trial shall direct all the forms of proceeding while the "senate are sitting for the purpose of trying an impeachment, "and all forms during the trial not otherwise especially provi-"ded for. And the presiding officer of the trial may rule all "questions of evidence and incidental questions, which ruling "shall stand as the judgment of the senate unless some mem-"ber of the senate shall ask that a formal vote be taken there-"on; in which case it shall be submitted to the senate for "decision, or he may, at his option, in the first instance sub-"mit any such question to a vote of the members of the "Senate."

So that it will be seen that the rule here is evidently framed upon the one adopted by the United States senate in that trial.

We have no particular objection to opinions being delivered, but we submit that the presiding officer here as a matter of law is only to decide the questions as they come up before him and that, as presiding officer, he cannot submit any argument on either side *pro* or *con.* on any proposition. He is the organ of the body, simply to announce in the first instance the decision upon the admissibility or inadmissibility of evidence proposed to be introduced, and then, if one-fifth of the members desire it, the question may be put to the body for it to render the decision of the court. There were a great number of instances in which the chief justice rendered decisions on the trial of Johnson, but in no one case did he give an opinion in support of his decision.

At the request of the managers, I have brought the matter to the consideration of the presiding officer. I think it is proper that some course should be determined upon now.

Mr. McCORKLE. Mr. Chief Justice, it strikes the counsel for the respondent that the duty of the presiding officer is a plain one, and that no rule can be adopted in this court which

is in contravention of the law under which we are now proceeding. The law is imperative, and any rule such as is suggested by the learned counsel, which will conflict with the act regulating impeachments, will be a nullity. As to intimations which the gentleman has heard, that the chief justice intends to give an opinion, stating the reasons for the decision he has arrived at, I cannot understand where the intimation could have come from.

Mr. BRAGG. It was intimated by the chief justice himself in an incidental remark he made during the course of today's proceedings.

The CHIEF JUSTICE. The statement of the presiding officer was, that he had made some notes with a view of expressing reasons in a brief way for his decision.

Mr. McCORKLE. We say, Mr. Chief Justice, it would be proper that such a course should be adopted. The gentleman says there is no precedent for it in the proceedings on the trial of President Johnson. On that trial, when the question was decided as to who should have the concluding argument, the chief justice who presided over the senate assigned the reasons why the managers should have the last address and it was because they held the affirmative of the issue. I submit that it would be an act of manifest injustice to the presiding officer himself if he is to be restricted to a mere declaration of what his opinion is without being allowed the privilege of assigning reasons therefor, and I can see no reason why the presiding officer should not assign reasons as has been done by the counsel on either side. What kind of a position would it place the presiding officer in, if he were not allowed to state the reasons which led him to his conclusion on an important question raised in the course of the trial. There is no restriction in this regard in the practice of legislative bodies, and this being so, what good reason can there be given why it should not apply to the presiding officer of this body. In addition to that, I suggest that this body is a court constitutionally recognized; and was it ever heard of in the supreme or superior

court or any other court, where a man of learning was presiding that he was not permitted in rendering an opinion to file his reasons therefor? It is contrary to the whole course of judicial proceedings and it would be at variance with the established usages. Therefore, we think that unless some good reason be shown therefor, the presiding officer should be allowed to state the reasons for the decision to which he shall arrive.

Mr. BRAGG. That would be very true, Mr. Chief Justice, if the presiding officer were a member of the court; but nothing can be clearer than that he is not one of the court and can give no vote touching the matters at issue before the court. He cannot give any opinion whatever upon any one of the articles when they come to be passed upon, for the law prescribes how that matter shall be proceeded with, that the clerk shall read over the articles and each senator shall announce his decision, guilty or not guilty. Therefore, there is no analogy in the illustration presented by the gentleman of proceedings in courts of law. With all due respect to the presiding officer, I think he is put in his position merely as the organ of this body to preside over it with certain limited and defined powers, and beyond them he cannot go.

The gentleman states that in one instance, Chief Justice Chase presiding over the senate on the trial of Johnson, did intimate an opinion that the managers should have the closing argument because they had the affirmative. That was nothing more than stating the usual practice, and may very well have been an incidental remark, because it was a rule so universally recognized.

Senator MOORE offered the following order:

Ordered, That the chief justice be requested to give his reasons for the conclusion to which he may arrive in regard to the admissibility of the question asked the witness by the counsel for the respondent.

Senator GILMER. I doubt not, Mr. Chief Justice, in view of the importance of the matter which has been discussed, it will be a great relief to you and probably remove some em-

barrassment, if this question be decided as I hope it may be by the senate. The law prescribes —

Senator MOORE. I rise to a question of order. The point I make is, that debate is not admissible.

Senator GILMER. I move, Mr. Chief Justice, that the senate be allowed to debate the question now under consideration.

The CHIEF JUSTICE put the question on the motion of Senator Gilmer, and it was decided in the affirmative.

Senator GILMER. I have but a word to say, Mr. Chief Justice. I was about to say that the law referred to by the distinguished counsel for the respondent evidently prescribes two modes of deciding questions of evidence—incidental questions; one is by the presiding officer, in the first instance, without division, and then on the demand of one-fifth of the senators present it may be decided by the yeas and nays. I desire to move a substitute for the order proposed by the senator from Craven (Mr. Moore) that this question which has been so long discussed be decided by the yeas and nays.

Senator WARREN. Mr. Chief Justice, I do not propose to discuss the question of law that has been raised here as to the right of the chief justice to give his reasons for the decision he may make, but to call the attention of the court and the distinguished counsel for the managers, to the trial of Johnson. On page 693 of the first volume, where Chief Justice Chase did give his reasons for his decision on the admissibility of the evidence offered in relation to the cabinet council and the president's purpose to make a case for the supreme court, for holding that the testimony offered was admissible. As to another matter suggested, I desire to say a word. The chief justice has hitherto put the question, where, after the statement of his decision, when the decision of the senate has been called for, as if it were an appeal from the decision of the chair. I submit this is not correct. Under our rules there is no such thing as an appeal from the decision of the chair at all. The rules provide that upon the de-

mand of one-fifth of the members present, the question shall be decided by the court. It is not in the nature of an appeal at all. So that the question that is to be put to the court is, "will the court admit the question put by the counsel for the respondent to the witness?" I find in the proceedings of Johnson that that usage was invariably followed by the Chief Justice of the United States. On page 693 I find this:

"The CHIEF JUSTICE. Senators you who are of the "opinion that the proposed evidence is admissible will, as your "names are called answer yea, those of the contrary opinion no." I submit that that is the proper form of submitting the proper question to the senate.

The CHIEF JUSTICE. The presiding officer will state that he was led into putting the question as an appeal from the decision of the chair, in the first instance, because that the form was adopted by some senator who requested that the question then pending might be determined by the court.

Senator GILMER. I have prepared an order, I will substitute for that offered by the Senator from Craven (Mr. Moore.) If his order is to be considered I desire to have mine offered as a substitute.

Senator MOORE. I withdraw the order that I offered.

Mr. GRAHAM. May I be allowed to make one suggestion, that it may be considered by the presiding officer and by the learned counsel for the respondent. As I understand it, whenever this senate sits as a court of impeachment, the rules as provided by law are the same whether the party on trial is the governor or any other officer. The chief justice is not here to preside because he is a lawyer, but he is brought here to preside because the ordinary presiding officer of the senate, the lieutenant governor, might be supposed to have some interest which would give him a bias in making decisions; and, whether the chief justice or the lieutenant-governor presides, the same rules obtain. It may very well be that the lieutenant-governor may not be a lawyer, and yet he would preside ordinarily on a trial of impeachment. His business

would be simply to administer the rules of the court as adopted for its government, on the trial, and his action upon those rules would be similar to those of the presiding officer of the senate acting as a branch of the legislature, over which he presides, putting the questions, and announcing the results; and, any further agency on his part would not be expected. The statements of arguments to sustain a decision would have this effect: there would be no opportunity to reply on the part of any one. We submit that the counsel having said all they can say, the matter should be decided by the court without any further debate or argument.

Senator DARGAN. I move, Mr. Chief Justice, that the court adjourn.

Mr. CHIEF JUSTICE. Before putting the question the presiding officer would like to state that he is much relieved by the fact that this discussion has taken place.

The act provides that the presiding officer shall "decide in "the first instance, without a division, all questions of evidence "and incidental questions, but the same shall, on demand of "one-fifth of the members present, be decided by the yeas and "nays."

The presiding officer had supposed that in deciding a question of evidence, it would be expected he would briefly state, as he has done in one or two instances already, the view he took of it. He had no thought of giving an elaborate opinion discussing the ground of the decision which he shall render. He would be very glad to hear what is the sense of the senate on that subject. If there is a desire that the presiding officer shall state the grounds of his decision, he will give them the benefit of such a statement. If, however, the senate say they simply wish the presiding officer to decide the question, although he would be departing from the precedents set by the Chief Justice of the United States, who gave some short reasons for the view taken by him without pretending to elaborate it until the rules were amended by saying "it shall be at

"his option to have a vote taken without giving any opinion at "all."

There is a seeming inconsistency between sections 5 and 6, paragraph 4, of the impeachment act. The former is confined to questions of evidence and incidental questions, which the presiding officer is to decide in the first instance. The latter provides that the chief justice shall not *vote* on any question during the trial, and shall *pronounce decision* only as the organ of the senate with its assent. These two sections can only be reconciled by confining section 6 to questions involved in the final vote on the articles of impeachment, in regard to which it is clear the presiding officer has no right to vote, and is "to pro-"nounce decision only as the organ of the senate with its "assent."

The CHIEF JUSTICE put the question on the motion of Senator Dargan to adjourn, and it was decided in the affirmative.

So the court adjourned.

TWELFTH DAY.

SENATE CHAMBER, Feb. 9th, 1871.

The COURT met at eleven o'clock, A. M., pursuant to adjournment, Hon. R. M. Pearson, chief justice of the supreme court, in the chair.

The proceedings were opened by proclamation made in due form by the doorkeeper.

The CLERK called the roll of senators, and the following gentlemen were found to be present:

Messrs. Adams, Allen, Battle, Beasley, Bellamy, Brogden, Brown, Cook, Council, Cowles, Crowell, Dargan, Edwards, Eppes, Flemming, Flythe, Gilmer, Graham, of Orange, Graham, of Alamance, Hawkins, Hyman, Jones, King, Latham, Ledbetter, Lehman, Linney, Love, Mauney, McCotter, Merrimon, Moore, Morehead, Murphy, Olds, Robbinson, of Davidson, Skinner, Speed, Troy, Waddell, Warren, Whiteside, Worth—43.

Senator GRAHAM, of Orange, moved that the reading of the journal of the proceedings, yesterday, be dispensed with.

The CHIEF JUSTICE put the question on the motion of Senator Graham, and it was decided in the affirmative.

The CHIEF JUSTICE. The presiding officer before announcing his decision upon the question of evidence, will call attention to some of the points made by the learned counsel on both sides. To the end that the members of the court may see clearly the dividing line between questions which are to be disposed of, by the final vote on the articles of impeachment, and can only be sustained *against* the accused by the concurrence of two-thirds of the members of the court—and questions of evidence, which are to be disposed of as the trial goes on, by the decision of the presiding officer, subject to a majority vote of the members of the court. An erroneous decision of a question of evidence, might on the one hand cripple the prosecution, or on the other, cut off the defence; thus, in effect, result

in a conviction by a majority vote; for this reason the impeachment act throws into the scale the weight of the decision of the presiding officer. What amounts to insurrection? Can insurrection be committed by creating terror among the people, through the disguised movements of a secret organization, or must there be open display of force? What is the legal effect, of declaring a county in a state of insurrection? Whether the executive is liable to impeachment, for executing an unconstitutional act? and whether the executive be not liable to impeachment, for executing an act which is constitutional, should he falsely, corruptly, and wickedly proclaim the state of things set out in the statute to exist, when in truth and in fact, such a state of things did not exist? are matters which may come up for decision on the final vote, in the decision of which the presiding officer takes no part. The discussion of these questions, however, in this stage of the proceedings, was pertinent, by way of inducement to the question of evidence, and has no doubt made an impression upon the minds of the members of the court, which will be available on the final action. Whether the accused should be allowed to prove that the state of things set out in the statute "for the protection of life and property" did in fact exist in the county of Alamance? is a question of evidence.

The presiding officer is of the opinion that the evidence is admissible on the ground that it tends, if true, to bring the case of the respondent within the provisions of the act—and also on the ground, that whether the act be constitutional or unconstitutional, and whether the facts show an insurrection or a riot, the evidence tends to disprove the allegation of falsehood, corruption and wickedness in the discharge of his official duty. The respondent is entitled to put the members of the court in possession of all relevant matter, so that the articles of impeachment may be disposed of by a final decision upon the merits. Upon this view, the question as to the order of introducing the evidence, does not arise because the evidence is not offered to prove treason or insurrection, but to show that the

state of things set out in the statute, did in fact, exist in the county of Alamance.

On the trial of the *habeas corpus* cases, to which reference has been made in the argument, evidence offered by the prisoners, to show that in part there was no insurrection in the county of Alamance, was ruled out by the chief justice on the ground that the judiciary had no power to revise the action of the executive.

The object of constituting a court of impeachment is to provide a tribunal with power to look into the conduct of all of the principal officers of the state, to pass on the fact whether they acted *bona fide* or *mala fide*. That is, in one case, whether the governor acted honestly, according to his convictions of duty, or whether he acted corruptly for some wicked purpose, out side of the discharge of his duty.

It follows, that the evidence offered is both relevant and material, and ought to be heard according to well settled rules of evidence. The rules have been established by the wisdom of ages, for the purpose of securing a fair trial, an eternal principle of justice: rules so established are binding upon every judicial tribunal in the land, whether in a civil or a criminal proceeding—from the lowest to the highest—a justice of the peace up to the court for the trial of impeachments.

WILLIAM J. MURRAY, *a witness called on behalf of the managers.*

Cross-examination resumed.

By Mr. Boyden.

Q. The question that was propounded to you at the time this dicussion arose was this: do you know of any secret political organization in the county of Alamance known as the "Ku Klux Klan," the "White Brotherhood," the "Constitutional Union Guard," and the "Invisible Empire"? A. I do not.

Q. I asked you some questions as to what day you were in Graham that week. You have had time to reflect upon the

matter and you can perhaps answer it more distinctly now? A. Do you mean previous to the hanging?

Q. I understood you to say that you had regular appointments in the town of Graham for Thursdays and Saturdays, and that you as deputy or you brother as principal sheriff, attended those days. Can you tell us with certainty on which day you were there? A. I cannot any more than it is my impression I was there on Thursday.

Q. You cannot give any more information than you gave when you were asked before? A. I cannot.

Q. I understood you to say that early on Sunday you got the information that Outlaw was hung? A. Yes' sir, it was eight o'clock—I suppose about that time.

Q. I ask you whether you went that morning to Graham or at any other time that week? A. I did not go that morning.

Q. How did it happen, as you were deputy sheriff of the county and did the main business, that when you had been informed of such a crime as that you did not go to Graham and inquire into that matter and endeavor to apprehend the felons? A. The sheriff went himself. We were both living at the same place. He went, and I thought one was sufficient.

Q. You thought one was ample? A. Yes, sir.

Q. You tell the court that one was ample for all such purposes? A. I thought the sheriff was the main one to go.

Q. You thought that it needed no one but the sheriff to apprehend these men? A. I thought there were other deputies over there and that he could get them if he needed assistance.

Q. That was the reason you did not go? A. That was one of the reasons. I had company at my house and that was another reason I did not go.

Q. Was there any other? A. None that I remember now.

Q. What is your full christian name? A. William James.

Q. Do you live at a place called Andrews? A. No, sir.

Q. I understand you to state to this court that you are not a member of any one of these secret organization? A. I am not.

Q. And never have been? A. And never have been.

Q. I understand you distinctly to say you know of no such organization in the county of Alamance? A. Not to my knowledge.

Q. It has been alleged here that the superior courts were regularly held during the year 1870. I ask you if there was any grand jury impanelled in that court in the fall term of 1870? A. No, sir.

Q. Do you know the reason? A. The jury summoned was challenged by the solicitor.

Q. Why? A. For some irregularity about the drawing of it.

Q. Do you know who made this irregularity? A. That was done by the commissioners of the county.

Q. You do not know whether any one of them belonged to these organizations? A. I do not.

Q. Who was at your house on Saturday night or at the house of the sheriff where you and he lived? A. There was nobody at my house. There was a gentleman and lady on their return from Tennessee, came there early that morning from the train. They were at my house when the messenger came there.

Q. Were you at your brother's that Saturday night? A. No, sir.

Q. You saw him on Sunday morning? A. Yes, sir.

Q. Where did you see him? A. I saw him at the office or store that we have there.

Q. Who else did you see there that Saturday night—tell us the names of all the persons that you saw on Saturday night, and at what time of the night you saw them and all you saw on Sunday morning? A. I do not remember who I saw on Saturday night.

Q. As near as you can. You must recollect some of them? A. I do not remember who I saw—any particular one on Saturday night. I do not remember any person at all now.

Q. You tell this court then that you have no recollection of seeing any person at your house or your brother's on Saturday night, except the persons that belonged there? A. I do not

think I did. I don't remember ot seeing anybody but some of the family that lived on the hill. I do not think I saw any of them after dark when I quit business.

Q. It was before dark? A. I do not remember who was about the store in the day time.

Q. You cannot remember any body? A. I have no distinct recollection.

Q. Now come to Sunday morning? A. I do not remember anybody but the gentleman that I speak of, from Tennessee—Mr. Leith. He came to my house and I made some arrangements for him to go home. After I made that I do not remember that I saw anybody but the messenger that came over—Mr. Andrews.

Q. How soon after he left did you see anybody and who was it? A. I do not remember how soon it was. It was Sunday and I stayed in my house that day. I do not remember of anybody coming in after Mr. Leith left.

Q. You do not remember anybody coming in and you do not recollect of going out and seeing anybody? A. I do not remember just now of any person particularly that I saw.

Q. I will ask you another question. Have any persons wearing what is known as the "Ku Klux Klan" disguise ever been at your house? A. I saw a party one night, but I don't know whether they called themselves "Ku Klux." They were disguised.

Q. When was that? A. I do not remember when it was.

Q. [By the Chief Justice.] Was it before or after Outlaw was hung? A. It was before.

Q. How long before? A. Several months I think. I cannot speak postively as to the time, but my impression is it was several months before he was hung.

Q. How many were there? A. think there was twelve or thirteen.

Q. What sort of disguises did they have on? A. They had on white gowns or something.

Q. How about the head and face? A. Their faces were hid so that I could not see any of their faces.

Q. Did they have any thing like horns? A. I think there were probably some few had horns or something sticking out.

Q. What were they engaged in when you saw them? A. They were standing at my door.

Q. Were they on horseback or on foot? A. They were on foot.

Q. Did they talk to you? A. They said something to me —asked me some few questions.

Q. Do you tell this court that you did not recognize the voice of one of them? A. I did not.

Q. Which way did they go from your house when they left? A. They went down the hill towards the factory—out that way, I do not know where they went.

Q. They went towards whose factory? A. It belonged to Murray Brothers—W. J. & A. Murray.

Q. They went down towards your factory? A. Yes.

Q. Do you know whether they went to the factory? A. I do know. I never saw them after they got outside of the gate of the yard.

Q. They were inside of the yard? A. Yes, sir.

Q. Where was your brother then—was he high sheriff at that time? A. Yes, sir.

Q. Where was he then? A. He was at home I suppose.—He was not at my house.

Q. How far from your house? A. About two hundred yards.

Q. Do you know whether they went to his house? A. I do not.

Q. Do you tell this court you never saw any men disguised except that one time? A. Never but that one time.

Q. You think that was several months before Outlaw was hung? A. I think so—I cannot be positive about it. My impression is it was some time before.

Q. What did they come to your house for?—do you know?—A. I do not know.

Q. They did not give you any information of what they came for? A. No, sir; none that I learned.

Q. They just came in, wanted nothing and went off? A. They asked for some water;—that is all they asked for.

Re-direct examination

By Mr. Graham.

Q. In regard to the fall term of the court in 1870: when did the judge get there? A. He got there Tuesday.

Q. He did not come on Monday; and when he went into court, you say, the solicitor challenged the array of jurors?—A. Yes, sir.

Q. Upon the ground that there had been an informality in the drawing of the jury? A. That is what I understand.

Q. Was it in this, that in the law requiring jurors to be drawn from the tax-payers of the year they had been drawn in this instance from tax-payers of the year with the exception of one township and that in that township the county commissioners did not attend to it and they took the old list of the previous year and put that in? A. That is what I understood was the objection.

Q. The judge held that he could not constitute a grand jury by reason of that? A. Yes, sir.

Q. Was the contrary view urged upon him and did the court adjourn over to give him time to consider? A. Yes, sir.

Q. The court adjourned till Wednesday? A. Yes, sir.

Q. The matter was then decided by him, at the instance of the solicitor, that he could not have a lawful grand jury and on that account the court was adjourned—at least, he went on to make orders and nothing else? A. He did all the business that could be done without a jury.

Q. Was the judge Tourgee and the solicitor Mr. Bulla?—

Q. I will ask you whether the relations between the white and the black population at that or any time were friendly as a general thing? A. I think as a general thing the relations between the two races were good.

Q. Were or were not the black people employed by the whites either in the way of laborers under the direction of white men or as rentors all over the country?—A. Yes, sir, they were employed in different ways, some for standing wages, some employed for a part of the crop, and some rented land and worked it on their own hook.

Q. Was there, as a general thing, any unsafety to black or white men on account of their political opinions, as far as you have any knowledge? A. I have no knowledge of anything of the sort, if there was anything.

Q. In relation to your not going to Graham on the day that you heard of the death of Outlaw, had you any motive in not going to evade any duty that belonged to you as an officer of the county? A. None at all. I thought it was the duty of the coroner. I think it may have been the duty of the sheriff to let the coroner know, if he had not found out, to have an inquest over him. I thought the sheriff was sufficient to attend to that business.

Mr. BOYDEN. I would like to ask the witness another question.

The CHIEF JUSTICE. You can do so by consent of the counsel.

Mr. GRAHAM. I have no objection.

By Mr. BOYDEN.

Q. You say that these disguised men came to your house. As that was after the law was passed making such things indictable, why did'nt you arrest them, you being deputy sheriff? A. I think it was before I knew anything of that law that they were at my house.

Q. You say it was two or three months before the death of Outlaw? A. It might have been longer than that. I do not know exactly the time they were there.

The CHIEF JUSTICE. What day was it that Outlaw was hung?

Mr. GRAHAM. I understand it to have been the 26th of February, 1870.

Mr. SMITH. The act making it a felony to go disguised and masked was passed April 12, 1869.

JESSE GANT *a witness called on behalf of the Managers being duly sworn testified as follows.*

By Mr. GRAHAM.

Q. Are you a citizen of Alamance? A. Yes, sir.

Q. And you have lived there all your life? A. Yes, sir.

Q. Have you been a public officer either of Orange or Alamance? A. Of both.

Q. How long since you first occupied a public position? A. I suppose I have been somewhat in public life for forty years or more.

Q. Do you know the people of the county pretty extensively? A. I used to think there was scarcely a grown man in Alamance or Orange but what I knew. My business was that of constable, sheriff or chairman of the county court.

Q. How long were you chairman of the county court? A. I do not recollect, but pretty much ever since 1842, most of the time.

Q. Up to when? A. Up to two or three years ago.

Q. When the government was changed. A. I was even appointed a magistrate then; for the purpose of going into that position, I was appointed by Governor Holden when he was provisional governor, and I accepted the office.

Q. You held it until the constitution was changed? A. Yes, sir.

Q. Have you been a county commissioner since? A. I was elected but I did not go in. There was a gentleman who was ready to take the office, and I did not get it.

Q. You were considered to be under disabilities? A. Yes, sir.

Q. With the acquaintance you have with the people of the county, I desire to ask you to state to the court whether, as a general thing, there is any unsafety to the persons of the black people or white people in the county on account of their political opinions? A. My opinion is, that they were not

unsafe as to any political matters. It is true there was some lawlessness going on at times we knew nothing about, but my impression is that there was no man need apprehend danger from any political matter that was up, as I understand it. That is a mere opinion however.

Q. What township of the county do you live in? A. In number 5—Faucett's township.

Q. Are you acquainted through that part of the county as well as the county generally? A. Yes, sir.

Q. State whether or not the colored people were generally engaged in business associations with the white people? A. Yes, sir.

Q. To the extent of being employed either as laborers, working for wages, or for a share of the crops, or as renters of land? A. That was their business generally. For a large portion, I give the blacks great credit for their manner of conducting themselves in my neighborhood of late years. For a time after the surrender, there was some stealing going on, but there is very little of it now.

Q. About the time this unfortunate man Outlaw was murdered was there anything like hostility between the whites and the blacks on account of politics? A. It was all peace and quiet in my neighborhood.

Q. What is your age? A. I am sixty-eight, or will be in a few days.

Q. Were you arrested by these Kirk men? A. I suppose it was the Kirk men. They looked like soldiers—had on the garb of soldiers. Some of them were white and some black—there was one black man.

Q. The blacks were wearing the soldier's garb? A. Yes, sir.

Q. Recruited in the county, or did they come from Tennessee? A. I understood from the blacks about me that this was a black man raised by a man of the name of Crawford. He said he knew me very well; but there are many black men I

do not know. It was very well understood that he was raised there in the neighborhood.

Q. He was a soldier and soldiering it about with these other men? A. Yes, sir.

Q. Where did they come upon you? A. They met me between High Falls Factory and my house, which are a little over a quarter of a mile apart.

Q. Narrate what took place? A. Shall I state the condition I was in at the time?

Q. Yes. A. I was unfortunate in the spring or early part of the summer, in being overturned in a wagon and getting caught under it. I knew nothing for some half hour.

Q. You were very much disabled? A. I was apparently killed; I suppose I breathed, but afterwards I came to. I was in bed for about two weeks, but I was not able to even to turn myself for part of the time in bed without aid from my family. I got out of bed, and after a few weeks was able to walk about the house. But I got tired staying about the house, being used to take a good deal of exercise, and I concluded I would walk down to the factory and did so. I remained there awhile and then concluded I would go back home. While I was sitting on the piazza at the store at High Falls, these sol-soldiers passed along with a nigger with them. They stopped—they did not know me, I suppose. I do not know they were—but I suppose there were what were called Kirk's men. There was frequent passing along there to Caswell—a good many going and coming. I asked them if they were going to Caswell. One of them said, "That is what we think of doing." I supposed from what took place they went to my house for me and then they had come that way and were on the way to Yanceyville. My family told me they had been there. As I went home and got about two hundred yards from the factory, marching on slowly up the hill I met these men, and one of them in front said, "Halt!" I did so. It did not take me long as I could not much more than move anyhow. I stopped. Said he, "What

is your name?" I said, "My name is Gant." He said, "That is the very one." They relied upon the nigger mostly as he belonged around there. He said to the nigger, "Are you certain?" He said, "Yes, I know Mr. Gant, I have worked for him—I know he is the man." I said, "Yes, I am the man, but what is it that you want—let us know something about it?" The corporal—they called him corporal—said, "You have got to come to camp with us," I said, "I am in a very poor fix to "go to camp; I am just making my way home to bed." He said, "You will have to come with us to camp." I said, "I "don't feel able to go, but if you say I must go, I shall not "offer any resistance—of course I must try." He said, "Do you want to ride?" I said "It is ride or tote, one or the "other—I can't walk." Then he detailed two or three men to accompany me to my house and they followed me. I went into the room to put on a coat and they dodged around peeping in the windows. I got ready. I was so situated that I had nothing but a young horse, all the other horses and mules were out of the way. He was got up. I was in a poor condition to ride on horseback. I was badly diseased and this was a young horse, not fit for me to ride on. But I managed to get on and then we went on until we got within half a mile of the camp. I said, "Men, you all being strangers here, is it possible that you go out and arrest strangers in the country without a list of those you are to arrest?" One said, "I think I have got a list with me," and run his hand into his pocket and pulled out a little strip of paper about as long as your finger. He did not pretend to try to read it, but he handed it to a smaller soldier, and he looked at it and began, "Y—a—u"—and there he stuck. I said, "that is a bad start for Gant; you had better let me look if you cannot make it out." He handed it to me and it was written in large, legible letters, "Job Faucett." I said, "men, is this the man you are after? He said, "Yes, that is the name." I said, "Men, I know Mr. Faucett, he lives up the creek, five or six miles. He is a young man of twenty-three or twenty-

four years old." He then went round cursing the nigger for awhile for getting him into a scrape, and then he said, "Old gentleman, I reckon you can go back home." I said "I reckon the old gentleman won't do anything of the kind. I am not of that sort. When I undertake to do a thing I do it, and I am going to camp to see how this matter is." I went. I knew some of the officers and when I got near the camp and they saw who it was, I think there was more cursing than I have heard for a good while—cursing the nigger and cursing the white ones and all, as they said, for "taking the most respectable man in the county"—though I did not claim it at all. The officers discharged me and I came back.

Q. At the camp, did you see any soldiers? A. Yes, sir. I stayed there a few minutes.

Q. What sort of discipline seemed to prevail among them?

Mr. BOYDEN. I do not think that is evidence.

Mr. GRAHAM. We charge that they were men utterly without character and were lawless.

The CHIEF JUSTICE. The question is competent.

Q. What sort of discipline, if any, was there? A. Just about as much as you would expect among a parcel of vagabonds.

Q. Was there anything like discipline or order? A. When I talked with them they were the most ignorant and stupid creatures I ever talked with, either white or black men—the soldiers. The officers seemed to be pretty shrewd men. The officers treated me with respect.

Q. They did not offer you any indignity when you went to camp and found you to be the wrong man? A. No, sir.

Q. You have been acquainted with courts of justice, and I will ask if they were such a force as would be selected to keep the peace as police?

Mr. BOYDEN. I do not think the question is competent.

Mr. GRAHAM. We withdraw it.

Q. [By the Chief Justice.] They were all in uniform? A. Yes, sir, black and white.

Q. In your long experience in that county did you ever know

of any resistance to an officer of the law at any time? A. No, sir, not in many years. I have been resisted myself in some instances as long as thirty or forty years ago, to some small extent. I have made some inquiry as to that matter both from sheriffs, deputies, constables and officers, how they were acting and whether—

Q. We do not care for their declarations? A. I have heard of none and seen none.

Q. I want to know whether there was any to your knowledge, any resistance to the authority of the law in the county of Alamance for several years before these troops came? A. No, sir, not at all. I believe I could now, old as I am, go and execute a process.

Q. Without summoning anybody to your aid? A. Yes, sir.

Q. Arrest anybody? A. Yes, sir, I think so.

Q. Were the courts of your county regularly held? A. They were all the time.

Q. At the usual times? A. A portion of the business was not done at the last term of the court. There was no jury.

Q. The judge and solicitor managed that? A. Yes, sir, there was some mishap about that.

Q. After argument they refused to hold court? A. Yes, sir.

Q. Was there the usual state of peace and quietness in the country prior to this killing of Outlaw, and up to this time for several years? A. Yes, sir, as much so as I have ever seen at any age of my life. People are as disposed to abide by the laws of the country and yield obedience to the authorities as at any time.

Q. These men dignified you, you say, as being "the most respectable man in the county." In view of that, I ask you whether there has ever been at any time any resistance either to the laws of congress or the policy of congress on the part of any portion of the population so far as you know, or of the officers of the state? A. Not within my knowledge; I don't think there has.

Q. You have paid your taxes regularly to the federal government and to the revenue officers? A. Yes, sir.

Q. And your state taxes? A. Yes, sir.

Q. Has there been any resistance to the collection of the revenue? A. None in the world that I have heard of.

Q. Has there been any attempt by violence to control the votes of either white or black politicians? A. Not that I ever heard of.

Cross-Examination.

By Mr. Boyden.

Q. You have been asked whether you have heard of any resistance to the lawful authorities?

Mr. GRAHAM. I asked him if he knew of any.

Mr. BOYDEN. He has been telling what he has heard in his answer time and time again.

Mr. GRAHAM. The questions I asked him were if he knew of any efforts to control votes, or if he knew of any violence to anybody, if he knew of any resistance to the law. I confined my questions to what he knew.

The CHIEF JUSTICE. I so understood the counsel, but the witness took the privilege of stating further.

Mr. BOYDEN. Without objection.

Mr. GRAHAM. I called the attention of the witness once or twice to the fact that I was asking for his knowledge, and if the gentleman did not make any objection that is not our fault.

Mr. BOYDEN. We have no objection to statements coming in of hearsay if we have the right to put in the same testimony.

The CHIEF JUSTICE. I do not think that the fact that the witness did not properly respond to the questions will admit of the introduction of hearsay evidence.

Mr. BOYDEN. Then I take it for granted that it is all out.

Mr. GRAHAM. If you had any objection it should have been made at the time.

By Mr. Boyden.

Q. I have no suspicion that you belonged to any of these secret organizations? A. I never did.

Q. I said I had no suspicion that you ever did. But I ask you in the first place, if you did have any knowledge of such organizations? A. Only from hearsay; none of my own knowledge.

Q. You have no personal knowledge of them? A. I have not.

Q. Have you ever seen men disguised, going about? A. I never have at any time.

Q. How far do you live from Graham? A. It is about four miles.

Q. You say you live in Job Faucett's neighborhood? A. I live in the township.

Q. How far from Faucett's? A. About four miles from Chester Faucett's.

Q. Does he hold any position? A. Do you mean Chester Faucett?

Q. Yes. A. No, sir, his mind is entirely done. He has no mind.

Q. How about Job Faucett? A. He is a youngster just grown up, and he is trying to make some bread and meat to live on.

Q. He is in no position? A. None that I know of.

Q. Did you see Outlaw's body after he was hung. A. I I did not.

Q. You did not go up after you had heard of it. A. No, sir, I did not go.

Q. How long before were you in Graham? A. I declare I don't know. Sometimes I may go to Graham almost every week, and sometimes it would be two or three weeks. I have no particular business that calls me there.

Q. When you were apprehended, as you have mentioned, there was one colored man who pointed you out? A. He said he knew me.

Q. You were carried over to the camp? A. Yes, sir.

Q. The officers treated you with respect? A. Yes, sir, the officers did not mistreat me.

Q. They said that you had been arrested without any authority? A. Well the officers cursed the soldiers a good deal about arresting me.

Q. Upon what ground? A. They alleged that they did not arrest and bring in the man they had gone for, and that they had brought in the "most respectable man in the county."

Q. In other words they had no authority to arrest you? A. That was the understanding.

Q. As soon as they got you there you were discharged? A. Yes, sir.

Q. And the officers cursed the men for bringing you there? A. Yes, sir.

WILLIAM HOLMES, *a witness called on behalf of the Managers, being duly sworn testified as follows:*

By Mr. GRAHAM.

Q. Where do you reside? A. About two miles south of Graham.

Q. What is the township called? A. Number 7, Albright's townships.

Q. What is your age? A. I am upwards of seventy.

Q. Have you been a long time connected with any public employment in your county? A. A good many years.

Q. What offices have you held? A. I was constable and deputy sheriff for some fifteen or twenty years, and after that acted as magistrate for several years.

Q. When did you cease to be sheriff? A. I think I acted a little while after the surrender. I was appointed after the sur-surrender and acted for a year or two, then resigned.

Q. You had been a magistrate many years before that? A. Yes, sir.

Q. What are the relations between the black and the white people in the township in which you live? A. They appear to get on very well in that township. They appear to be friendly. We employ them and they get along very well.

Q. What are the relations as to friendliness or otherwise between the black and white people generally in the circle of your acquaintance, and what was it before this affair of the hanging of Outlaw? A. I think very friendly, they get on—that is, they employ them.

Q. Is there any instance where a colored man of good character has failed to get employment if he applied for it, to a white man, to your knowledge. A. Not in my knowledge.

Q. In some instances they are employed as laborers under the direction of the owner, are they? A. Yes, sir.

Q. And in other cases they rent land? A. Yes, sir, and carry on little farms.

Q. As a general thing, so far as your knowledge extends, is there any danger in point of safety to the colored people in that county? A. Not to my knowledge, there is not.

Q. I mean at the time of the occurrance of Outlaw's hanging or any time before, was there any want of safety to the black people from the whites? A. Not to my knowledge.

Q. For the last five years since the surrender of the southern army has there been a single instance of resistance to the authority of the law, either of the United States or the state, to your knowledge. A. Not to my knowledge.

Q. Were the taxes collected by the state and the United States authorities in your county as far as your knowledge extends?

Mr. BOYDEN. You will speak from your own knowledge.

A. I think they were.

Q. You paid your own? A. Yes, sir.

Q. Did you say your neighbors and friends paid theirs or not.

Mr. BOYDEN. You must speak of the individuals that you saw pay.

Mr. GRAHAM. The counsel can bring the details out on cross-examination if he desires.

Q You say the taxes were paid in your presence in some instances to the federal tax gatherer and also to the sheriff of the county, and if there was any resistance by force to the pay-

ment, it never came to your knowledge? A. I know nothing of it, if there was ever any resistauce.

Q. Do you know of any attempts by force to control the votes of colored people or white people there? A. I don't.

Q. Or to scare them or intimidate them? A. I do not.

Q. You do not know of a single instance? A. Not one.

Q. You generally go to elections? A. I generally go to the elections.

Q. And vote? A. Yes, sir.

Q. No such occurrence has taken place in the county to your knowledge? A. Not to my knowledge.

Cross-examination.

By Mr. Boyden.

Q. Do you know of any secret political organizations in the county of Alamance, either under the name of the "Ku Klux Klan," the "White Brotherhood," the "Constitutional Union Guard," or the "Invisible Empire"? A. I do not.

Q. Did you ever see any person since the surrender disguised? A. I did not.

Q. You have never seen any of these persons either riding or walking with their faces and bodies concealed? A. I have not seen any.

Q. What township did you say you lived in? A. Allbright's township, Number 7.

Q. Did you see the body of Outlaw? A. I did not.

Q. You did not go up after you heard he was murdered? A. I did not hear of it, I think, until after he was buried, I am not certain as to that. I heard it shortly after that—I reckon not before Monday.

Q. You think you heard it as soon as Monday? A. I think I did.

Q. You live about how far from Graham? A. About seven miles.

Q. You did not go up? A. I went up a few days after that—sometime that week.

Q. To which political party did you belong? A. I belong to the conservative party.

Q. You say that you have no personal knowledge of any attempt to prevent colored men or white republicans from voting? A. I have not.

Q. Have you seen persons that had been scourged or mutilated? A. I saw some.

Q. Tell us who they were? A. There was a colored man came to my house. He said some black men went out——

Q. I do not ask what he said. Did you see any marks on his body? A. He showed me one I think on his arm.

Q. Did you see his back? A. I do not think I did.

Q. Won't you try and recollect? A. He said—

Q. They will not allow you to tell what he said at the time. I ask you what you saw, if you did not see his back and if it was not terribly scourged? A. I do not think I did. I do not think he showed me his back.

Q. State whether his clothes were bloody—his shirt? A. I don't know as they were.

Q. I want your best recollection about it? A. I don't think his clothes were bloody, it was some days after.

Q. State who was along with this man? A. His name was Henderson Coble.

Q. Is he a colored man or a white man? A. He is a colored man.

Q. Tell us who was along with him? A. I do not think there was any body with him.

Q. I thought you said there was a number of persons? A. I said he stated that he had been whipped by—

Q. There was no body along with him? A. Not with him when he came to my house.

Q. Before he left did any body come? A. No, sir, not any body that I know of.

Q. What members of your family saw him beside yourself? A. I don't know as to that. He was not in the house. He just come to the yard. He appeared to be in a hurry?

Q. When was this? A. It has been nearly a year ago.

Q. Can you tell what month it was? A. In February, I think, or the first of March.

Q. February or March? A. Yes, sir.

Q. Have you seen any other person who had been scourged. A. I saw one who said—

Q. I ask you what you saw? A. I saw nothing.

Q. You only saw this man? A. That is all.

Q. You said you saw a cut on the arm of this man? A. Yes, sir.

Q. What sort of a cut was it? A. He said—

Q. I am not asking you what he said. A. It was a bruise.

Q. Describe it as well as you can? A. It looked like it had been done with a stick.

Q. What sort of a stick, a club or a small stick? A. It looked something like a club. He said it was a club.

Q. Did you see the body of William Puryear that was found? A. I did not.

Q. How far was that from you? A. Some four miles I reckon.

Q. Did you hear it was found directly after? A. I heard of it a day or so after I suppose.

Q. You did not go to see anything about it? A. It was on the other side of the river from me.

Re-Direct Examination.

By Mr. Graham.

Henderson Coble is a black man of pretty good character? A. Yes, sir.

Q. He got out a states' warrant to have the man taken up who beat him?

Mr. BOYDEN. We object.

Q. Did he have some men arrested for it? A. Yes, sir, the men were arrested from what he said that morning—

Mr. BOYDEN. We object to the answer.

Q. Do you know the fact that men were afterwards arrested and brought to the court to be tried? A. They were.

Q. Where are they now? A. A part of them are in the

penitentiary, those that did not get away before they could be arrested.

Q. Were they white men or colored men? A. They were colored men.

Re-Cross Examination.

By Mr. Boyden:

Q. Do you speak of your own knowledge—were you at the trial? A. My knowledge from what he told me—

Mr. BOYDEN. You have no right to tell what he said. When you speak of your own knowledge you have no right to state what anybody else told you.

By Mr. Graham.

Q. Do you know that the men he charged were tried and are now in the penitentiary? A. I am told so.

Mr. BOYDEN. We object.

Q. You have been in the penitentiary to see?

Mr. BOYDEN. We object to the whole of this testimony. It is evidently founded upon hearsay.

Mr. GRAHAM. We offer to prove it in this way, and if it becomes necessary we will send for the records.

The CHIEF JUSTICE. If the counsel can agree upon both sides to allow such matters then it will be admitted.

Mr. BOYDEN. I have no objection, but they cannot do it and then exclude us from the same privilege.

Mr. GRAHAM. You had better produce the penitentiary records.

Q. This was Henderson Coble who was whipped? A. Yes, sir, and some two or three others at the same time, I suppose.

Mr. BOYDEN. We object to this heresay testimony.

Q. Two or three others in the same category. They were pretty respectable colored men who suffered? A. Yes, sir.

Q. I do not recollect whether the question has been asked. Was there peace and quietness in your neighborhood in the early part of 1870? A. As far as I know it was all peace and quietness.

EMIAH HOLT, *a witness called on behalf of the Man-*
eing duly sworn testified as follows:

MR. GRAHAM:

Where do you live? A. In Alamance county
What part of the county—what township? A. Graham,
t two miles and a half south-west of Graham.
. What is your age? A. I am going on seventy-five
rs, since last June.
Q. State what is the relation between the black and white
ople in your neighborhood and county as far as you know?
. Do you mean at this time?
Q. Any time back within two years, and particularly about
January, 1870? Q. About that time they were quite peace-
able and friendly as far as I know; in my neighborhood, I am
certain of it.

Q. The black people were employed by the whites and had
business transactions with them? A. Yes, sir, a good many
of them.

Q. Was there ever a black person—a respectable man of
that complexion—refused employment, to your knowledge,
on account of political considerations or the way he voted?
A. Not that I know of.

Q. In business transactions was there any denial of credit
to them or of confidence in any way to your knowledge, where
they were supposed to be respectable men with power to make
their contracts good? A. I do not understand the whole of
your question. I am a little deaf.

Q. I want to know if in business transactions with the
white men in your county, terms less favorable than would
be allowed white men were exacted from them? A. None
that I have heard of.

Q. In the acts of good neighborhood in cases of sickness
was there any denial to them of charities and
was. was there any re-
when he

asked a favor of a neighbor, or on account of political considerations. A. None that I know of, except that it was a physician who refused to go and see some negroes unless he could have some assurance of getting paid for it.

Q. It was not because they would not vote his ticket or any thing of that sort? A. No, not that I heard.

Q. You say, as a general thing, the relations between the white and black people are friendly? A. Yes, sir, in my neighborhood.

Q. Do you know of any resistance to the law there, either to the United States laws in the collection of whisky taxes in your part of the county or any other taxes under state laws? A. None at all that I ever knew of.

Q. You have been in the habit of carrying on a distillery and making spirits? A. Yes, sir.

Q. Did you pay taxes to the public officer? A. Yes, sir.

Q. Do you know of any person refusing the payment of his taxes in the county? A. I do not.

Q. Are the black people generally employed by the whites there as workers on the farms for a share of the crops or for wages and as renters of land? A. There is a good many employed in bothways, some as hirelings, some as croppers—working for a part of the crop, I mean.

Q. Do you know of any man being refused employment—being refused to be contracted with there by reason of the way he voted? A. I think I heard one man say that not a nigger—

Q. It is not proper to state what you have learned from hearsay. I wish to know if you saw any transaction of the kind yourself—any refusal to give employment on account of political motives? A. I do not know it. I only know that the man worked there and he left; I have no way of telling why he did leave only by asking.

Q. In relation to the general condition of the neighborhood and county, as far as you know, was it peaceable as a general thing or otherwise? A. It was quite peaceable, I think.

Q. Do you know of any resistance to the officers of the law

in your county within the last three or four years? A. I do not.

Q. Nothing of the sort? A. I never heard any or saw any.

Mr. BOYDEN. You must not tell what you heard.

Q. Do you know of any instance of resistance to a law of the United States or to a state law? A. No, sir.

Q. Are you in the habit of going out to public places a good deal? A. Not much.

Q. Are you in the habit of going to Graham frequently? A. I don't go there very often.

Q. Do you go to court? A. I always go to court.

Q. If there was any instance of resistance to the law either of the United States or the state, it never came to your knowledge? A. It never did.

Q. The clerk's office was always open when you went there for probate business, the proving of wills and granting of letters of administration? A. It has always been open ever since I knew what a court was.

Q. In relation to the county commissioners—they have their regular sessions for county business as usual? A. Yes, sir.

Q. [By Mr. Boyden]. Do you speak of your own knowledge? A. That is what I say, I saw them transacting business.

Q. You saw them in the actual exercise of power performing their duties? A. Yes, sir.

Cross-Examination.

By Mr. Boyden.

Q. I understood you to say that you do know of one instance where a man was refused employment on account of political opinions and was made to leave?

Mr. GRAHAM. No, he did not say that; I object to any evidence, unless the witness has a knowledge of the thing.

Mr. BOYDEN. I think it is very clear that if the man was driven off, and the witness heard him say so, it is evidence as part of the *res gestæ.*

Mr. GRAHAM. I submit that unless the witness was present at the time of the transaction, it is not evidence.

Q. What was the answer you gave to the question? You were asked if you knew of any body being turned off on account of his political opinions. I do not recollect what you said? A. I said I knew of one from hearsay.

Q. Only from hearsay? A. They say I must not state that.

Q. You only know from hearsay? A. That is all.

Q. I understood you to say that you knew of one man leaving another's employment—you knew that fact? A. Yes, sir.

Q. Were you not present when he left? A. No sir.

Q. What you heard said was not when the man left? A. No, sir, it was afterwards.

Q. Do you know of a colored man of the name of Caswell Holt? A. Yes, sir.

Q. Where does he live. A. He lived on my land.

Q. Do you know any thing about his having been whipped? A. He lives about a quarter of a mile from my house, and the morning after he was whipped, he sent for me to come there and I went up.

Q. What did you see? Did you see his body? A. I did.

Q. What was its condition? A. It was pretty badly whipped.

Q. Did you see any body else who had been whipped? A Not to my knowledge.

Q. Did you see the back of any one who had been whipped? A. No, sir, I saw no other back.

Q. Do you know any thing about Joseph Harvey? A. No sir.

Q. When was this you saw Caswell Holt—how long ago? A. It was in the spring, about twelve months ago I think.

Q. There have been two superior courts in the county?—A. There have been two courts called but the last court, they did not do anything scarcely.

Q. Do you know of any person being indicted on account of whipping Caswell Holt? A. Caswell Holt had a state's warrant out.

Q. You do not answer my question. I have no objection to that answer however. Do you know of anybody being indicted or punished for the offence? A. I don't hardly know how to answer that. There was some men tried for it.

Q. In the superior court? A. I understood so—I was—

Q. You will only speak from your own knowledge? A. I did not attend the trial.

Q. Do you know of any secret organization in the county of Alamance under the name of "Ku-Klux-Klan," "The White Brotherhood," "The Constitutional Union Guard" and "The Invisible Empire," or any other name? A. No sir, and I never saw any one that I had any suspicion belonged to any such.

Q. Did you never see any persons going about disguised? A. I never did.

Q. Did you ever see any body at your own house disguised? A. No sir.

Q. You never saw anybody wearing what is called the Ku-Klux disguise? A. No, sir, if I did I did not know it.

Q. You would have known if you had seen them disguised? A. I am very near sighted, and if I was standing at my door and fifty men should go along the lane, which is fifty yards off, I could see something moving, but whether black or white I could not tell.

Q. You have no personal knowledge of the laws being resisted in any shape? A. I have not.

Re-Direct Examination

By Mr. Graham.

Q. This man Caswell Holt—was he a politician and understood to be an influential man? A. He belonged to the league, he said.

Q. What was his general character as an honest man?—A. Very bad.

Mr. BOYDEN. We object to that, Mr. Chief Justice. What has that to do with the matter. Is it insisted that they have a right to punish a man because his character is bad?

Mr. GRAHAM. Not at all; but it is insisted, and such are the allegations in the answer, that these acts of violence were committed from political motives, and it is competent to show what is the character of the man for honesty or dishonesty, in order to show that these acts of violence proceed from no political motives, but were directed at the individual because of some moral defect in himself; that they were inflicted as a punishment for his offences. In other words, we propose to show that there was no political significance in these whippings of colored men.

Mr. SMITH. If this testimony be admissible, Mr. Chief Justice, where is it to end? Are we to go into the character of a man who has been injured in every instance where a lawless act has been perpetrated? I agree with my associate that the character of the party is totally immaterial. An outrage is as great a violation of the law, whether the party be one of the most desperate and wicked of men in the country or one of the best men. There may be a difference in the moral character of the act, but the legal quality is the same. The answer alleges lawlessness by secret associations, and that the proclamation of the governor was put forth for the purpose of preventing these acts of violence. It seems to me that it is totally irrelevant what the character of the man injured.

Mr. MERRIMON. Mr. Chief Justice, the point, it seems to me, is this: The respondent sets up by way of defense the existence of these secret organizations, of which they complain and allege that they are political organizations; that their object was to subvert the reconstruction acts of congress and the government of the state inauguarated in pursuance of those acts; and they allege that one of the means to be used was to whip and scourge and kill the colored people of the state because they were enfranchised by means of this reconstruction policy; and they desire that this court shall infer when one of these men is shown to have been whipped that it was because of his political notions, and because he was enfranchised, and not because of any crime or alleged crime charged upon him. Then, sir, if that be

true, I insist that whenever they show that one of this class of people was injured for the purpose of raising the presumption that it was the result of political considerations, it is competent for us to destroy that inference, and that it is not only fair, but is perfectly legitimate in view of the issue before this court. We insist that all the strict technical rules that apply to a formal indictment, cannot apply here, for this very plain reason that, articles of impeachment are not drawn with the technical nicety that pertains to an ordinary bill of indictment. The articles are drawn more loosely, in this general way, on purpose to let in evidence of this very character, in order that the whole case may be made to appear to the court. I repeat, the object of the respondent is to let the court draw the inference that, whenever a colored man was whipped, whether from testimony introduced by the managers or the defence, that he was whipped because of his political notions, and because he has a right to entertain those political notions and exercise his political privilege in pursuance of the reconstruction policy. We have a right, we insist, to repel that inference by showing that the man was one who had perpetrated crimes, and that the whipping or outrage—we admit it was lawless,—was imposed upon him because of that, and not because of his political opinions.

Mr. BOYDEN. I think the gentleman has misconceived the purport of the respondent's answer.

Mr. MERRIMON. The gentleman made the statement the other day in his speech.

Mr. BOYDEN. I am talking about the answer. In the way of opening, it is usual to present a case in several views.

But, Mr. Chief Justice, we insist that it makes no difference. If these organizations undertook to take the laws into their own hands instead of resorting to the courts, and decreed the punishments and carried them into effect, it makes no manner of difference whether the motive was political or otherwise, it was just as much the duty of the governor to put down riots or this illegal way of punishment of citizens for pretended

crimes, as if the motive were a political one. He is to prevent men from taking the law into their own hands and carrying out their iniquitous purposes. It is wholly immaterial, so far as the governor is concerned, what was the reason for chastising these men. If this man was a republican and a colored man, and they chastised him really on that account, they would naturally pretend that the purpose was because he had committed some crime for the purpose of concealing their real object. Is it to be contended that a court will admit testimony to show that a man against whom an outrage was perpetrated was a bad man, and that hence there was an excuse for an outrage upon his rights. The act does not provide that the governor shall issue his proclamation when the crime is against this party or the other party, but that he may issue his proclamation and put the people under military law when such a state of things exists that life and property are not safe and offences go unpunished by the civil law.

Mr. BRAGG. Mr. Chief Justice, a good deal of what has been stated is correct. But, sir, these other matters have been brought into the defence also. We admit there may be insurrection without these political questions being mingled in the insurrection. We do not pretend to say that the whipping of a bad man is not against the law. No body has a right to whip a man, bad or good. Let us see, sir, what the accused has said here in his defence. His answer at page 13, reads as follows;

"Within a few days after the ratification of the said act, a "a body of armed men, to the number of fifty or more, mem-"bers of the aforesaid organizations, disguised by masks and "other means, intending to awe members of the republican "party throughout the state, by putting to death certain re-"publican citizens of Alamance county, did, on the night of the "26th of February, 1870, enter the town of Graham, the shire "town of the said county of Alamance, with the purpose "and intent of putting to death every adult republican male "resident of the said town of Graham, and did, with such pur-

"drag from his bed and put to death by hanging, in the square "of said town, one Wyatt Outlaw, an old colored man, whose "only offence was that he belonged to the republican party."

And, sir, all through this defence, there is an endeavor to give a political turn to this whole matter, to show that these whippings and scourgings were done for political reasons—for the double reason, I may say, according to the defence, of intimidating one class of the community—one political party, and of overturning the laws of the state and of the United States conferring upon colored men the privileges of citizens, which they had not enjoyed heretofore. So that it becomes highly material to the inquiry, when it is alleged that a man was scourged for those particular reasons, to show what his character was and what he had been scourged for—for instance, stealing. It is suggested by my learned associate that, though it is against the law, these and other breakers of the law are not unfrequently lynched in different communities; but it does not follow that it was done for the reason alleged here. I read from page 7 of the answer:

"The members were united by oaths which ignored or repu-"diated the ordinary oaths or obligations resting upon all other "citizens to respect the laws and uphold the government; these "oaths inculcated hatred by the white race against the col-"ored race; the members of the klan, as above stated, were "hostile to the principles on which the government of the state "had been reconstructed, and in many respects, hostile to the "government of the United States."

Hence I think, in view of the allegations in the answer, the testimony is admissible.

Mr. CONIGLAND. There is no question in the books better settled, than the cases in which evidence as to character may be introduced. The character of a witness may be put in evidence, in order to affect his credibility. Were the parties who did this whipping convicted thereof before a court of justice, evidence as to the character of the party on whom the offence was committed would be heard by the court

in mitigation of the punishment. But in the present instance the evidence proposed to be introduced raises a question wholly foreign to the issue before the court. It is indeed said, that the purpose is to show that these offences were not instigated by political motives and thus it is proposed to meet the allegations in the answer, but the answer proceeds on the ground of an organized society to subvert the laws, and if we prove that the offences complained of were committed in furtherance of that design, it cannot affect the cause no matter what may have been the character of the victims: outrage, political or otherwise, we insist justified the respondent's action. The effect of the question, if allowed, will be to raise collateral issues, wholly at variance with the main issue, and to occupy the time of the court in hearing evidence as to the character of the parties who may have been maltreated. In case we can prove that one hundred persons were illegally punished, we might, if this question is allowed, summon two hundred witnesses—two as to the character of each person, for, if they are allowed to prove the bad character of the parties, we must be allowed to sustain their character.

Mr. GRAHAM. Mr. Chief Justice, I have no purpose to prolong this discussion. It is the right of the party offering testimony to conclude the argument. The whole case on the part of the respondent is that these violations were committed from political motives and were inflicted upon men because of their political opinions. We offer evidence to show that the man who suffered may have brought the infliction upon himself by other means than on account of his offensiveness because of his political opinions.

Mr. SMITH. I desire to call attention to another part of the answer, on page 7:

"These combinations were at first purely political in their "character, and many good citizens were induced to join them. "But gradually, under the leadership of ambitious and dis-"contented politicians, and under the pretext that society "needed to be regulated by some authority outside or above

"law, their character was changed, and these secret klans began "to commit murder, to rob, whip, scourge, mutilate unoffending "citizens."

Mr. GRAHAM. It does not matter. That allegation does not materially change the aspect of the question. It still speaks of the acts being done under the lead of ambitious politicians. I suppose that "ambitious politicians" may have an aversion to crime as wellas a desire to triumph in their party connections; and we offer this evidence in order to show there were other motives than political motives which operated in relation to the whipping of this man. I submit it is competent evidence on that point. Lynch law is occasionally administered in all states of society. There was a negro put to death in the presence of a judge in Salisbury ten years ago, and another one put to death in the presence of a judge in Cleveland county some twenty years ago—not on account of political considerations, but because they had been acquitted of crimes with which they were charged. Though the jury found them not guilty, mob violence interposed and inflicted punishment. It will also be recollected that in the city of San Francisco, in California, a number of years since, several men were summarily executed on account of stuffing ballot boxes at an election. All these things could take place without any sort of insurrection or any political motive and without any design against the government. If it can be implied that there was reasonable ground for belief that other motives besides political motives actuated the parties who did this illegal act, it is proper to show it in order to enlighten the court in regard to it.

The CHIEF JUSTICE. The presiding officer decides that the evidence is admissible. Although the act is just as lawless when perpetrated on one man as another, yet the articles of impeachment and the answer present the matter in two aspects. One is that the county had become lawless, and that the other this lawlessness was induced by reason of political elements intro-

duced into the organization. In that point of view the evidence is relevant.

JEREMIAH HOLT. [*Examination resumed.*]

By Mr. Graham.

Q. What was the general character of this man Caswell Holt as to honesty or dishonesty? A. Not good.

Q. In what respect was it not good? A. He was considered a roguish man—would steal.

Q. You have been asked whether you ever knew anybody to be punished for whipping him. Do you know of his having some persons arrested and examined before a justice of the peace? A. Yes, sir.

Q. Before Mr. Hardy? A. Peter Hardy.

Q. What is the politics of Mr. Hardy? A. Radical, I think.

Q. [By Mr. Boyden.] Were you present at the examination or are you talking of what you heard? A. Yes, sir, I was a witness in the case.

Q. You were before Mr. Hardy at the hearing, what did Mr. Hardy do with the case? A. He examined the witness.

Mr. SMITH. If there was any judicial proceeding, the evidence of what transpired is the written memorial made at the time.

Mr. GRAHAM. I submit that what took place on the trial in the presence of the witness is competent evidence.

The CHIEF JUSTICE. The presiding officer is of the opinion it is competent for you to show that the witness proved an *alibi*.

Mr. GRAHAM. I expect to show that the magistrate whom the witness has denominated a "radical" discharged the man charged.

The WITNESS. Yes, sir, they were all discharged.

Q. The magistrate heard the evidence. A. Yes, sir. Mr. Badham was the lawyer.

Q. He appeared for Caswell Holt? A. Yes, sir.

Q. And Mr. Hardy the justice of the peace, after hearing all the evidonce dismissed the warrant? A. Yes, sir.

Re-Cross-Examination.

By Mr. BOYDEN.

Q. Did Caswell Holt swear he knew the men who had whipped him? A. He said he knew one.

Q. On the trial? A. Before the trial.

Q. He had him before the magistrate? A. Yes, sir.

Q. Did they prove an *alibi* on the other side? A. Yes, sir, he was proved as clear as anybody.

Q. Did they prove that they were in some other place when it was done? A. He proved that he was away.

Q. That is what I mean? A. Yes, sir.

Q. He called witnesses to prove that he was at home and could not have done it? A. Yes, sir.

Q. Do you know whether this negro was afterwards shot—after this investigation? A. He was.

Mr. GRAHAM. That is going into new matter?

Mr. BOYDEN. It is connected with this.

Mr. GRAHAM. We have gone through with the whipping.

The CHIEF JUSTICE. You might have called that out on the cross-examination. You are now cross-examining the witness in reply.

M. BOYDEN. Yes, sir, in reply to this question about his being whipped because he was guilty of stealing. They pretend that he was a man of bad character, and to meet that view of the case and to meet the allegation in the articles, we now offer to prove that they did establish an *alibi* by which the accused party was acquitted; and we now understand that because Caswell Holt made that complaint he was afterward shot.

Mr. GRAHAM. The allegation on the other side was that this man had been whipped and cruelly treated, and we examined the witness upon nothing else except that. This matter which is sought to be introduced is new matter.

The CHIEF JUSTICE. I think it is irregular to introduce the proof after the cross-examination has been closed.

GEORGE PATTERSON, *a witness called on behalf of the Managers, being duly sworn, testifies as follows:*

By Mr. Graham,

Q. Where do you live? A. Alamance county, Patterson township, number 1.

Q. What business do you follow? A. I am a farmer.

Q. What is your age? A. Fifty-eight.

Q. Are you well acquainted with your neighborhood? A. Yes, sir.

Q. Were you a representative in the legislature in former years? A. Yes, sir.

Q. State to the court what, in your township in the year 1870, January and February and the following months, was the state of feeling between the white and black people as to their being friendly or unfriendly? A. I think they were friendly.

Q. There was the usual business transactions between them, forming contracts? A. Yes, sir.

Q. Were the blacks employed principally in farming? A. Yes, sir.

Q. Some by contract on wages, some on shares of crops, some renting lands? A. Yes, sir.

Mr. BOYDEN. You will speak of your own knowledge.

Mr. GRAHAM. I am seeking to confine the witness to that.

Q. Do you know what was the general arrangement in the country among your neighbors and friends as to transactions of the business between the white and black people?

Mr. BOYDEN. That is improper. It cannot be supposed that the witness knew any such general transactions between man and man, or that he had personal knowledge of them.

Mr. GRAHAM. I don't desire to ask any evidence that will be considered in the slightest degree improper, as I want to show that, so far as this witness goes, business transactions took place and contracts were made between the whites and blacks. This defence is placed on the ground that there was

maltreatment of the blacks as a race, and a disposition to proscribe and do them injustice because of their exercising the right of suffrage in a way which did not suit their employers. I want to show there was no oppression, that they made contracts as other people made them, and there was a general peaceful state of society,

Mr. BOYDEN. As the question has been circumscribed in the statement of the counsel, we can have no objection. They can prove that in any case where the witness saw the contract made or heard it made, but the question that was first asked was much more extensive than the one now suggested.

Mr. GRAHAM. I have asked time and time again the other witnesses the same question in substance without objection. It is a general fact capable of being proved as any other general fact, the state of society between these people.

The CHIEF JUSTICE. You have a right to prove by general reputation the condition of things as between the whites and blacks.

Q. State whether, as a general thing through your county, the business relations between the white and black people were those which belonged to the conditions in which they were respectively, the one being able to give and the other wanting labor? A. They were generally employed I think —those who wanted employment.

Q. Those who wanted employment could get it as laborers, either for wages or for a share of the crop, or could rent land upon reasonable terms, where they were men who were capable of fulfilling their contracts? A. Yes, sir.

Q. Was that general throughout the country as far as you know? A. It was as far as I know.

Q. You have an extensive acquaintance in the country outside of your township? A. Yes, sir.

Q. Were you a magistrate of the county? A. Yes, sir, for many years.

Q. As a justice of the peace and member of the house of

representatives, you were in the habit of being in public places very frequently? A. Yes, sir.

Q. If there was anything took place in your neighborhood, you generally attended those public assemblies? A. Yes, sir.

Q. Are you often at the court house? A. Not very often, at Graham, except at the time of courts.

Q. How far do you live from Graham? A. Fourteen miles.

Q. The southern part? A. The south-western part of the county.

Q. Was there any hostility between the two races leading to violence on account of political differences? A. I think not.

Q. Do you know of any attempt by force or violence to control the black people in their votes? A. No, sir, I don't know of any.

Q. Do you attend courts in the county pretty regularly? A. Yes, sir,

Q. Do you act as foreman of the grand jury? A. I have on one occasion.

Q. When? A. The June term, 1869, I believe.

Q. Did you pass upon all the business sent before? A. Yes, sir.

Q. The court was held as usual? A. As usual.

Q. Was any attempt made to intimidate you or in any way prevent you from the performance of your duty? A. None whatever.

Q. Was there any resistance to the law in your part of the county or your neighborhood for the last several years. A. No, sir.

Q. Were there magistrates in your township? A. There were at all times.

Q. Republican or conservative? A. There was one on each side.

Q. Did you ever know anybody to apply for a state's warrant and support the application by a proper affidavit and not get it? A. I never did.

Q. Did you ever know a constable having a process, failing to execute if he could find the man? A. I never did.

Q. Have you ever known any resistance to the collection of the United States revenues? A. No, sir.

Q. There were a good many distilleries in your county about that time? A. There were some—not very many.

Q. Distillers, merchants and other people liable to pay United States taxes—was there any resistance by them by force, to pay any part of the taxes? A. None to my knowledge.

Q. How was it in reference to state taxes? A. It was about as usual, so far as people were able to pay.

Q. Did anybody take up his gun to avoid it? A. No, sir.

Cross-Examination.

By Mr. Boyden:

Q. To which political party do you belong? A. To the conservative.

Q. Do you know to what party the last witness, Mr. Holt, belongs? A. I believe I have heard him say

Q. Do you know it? A. I have never seen him vote in my life.

Q. Do you know what his opinions are and to which party he belongs? A. I think he is conservative.

Q. You were asked about the general state of feeling between the white and colored people in your county, what you thought it was? A. I have said it was good.

Q. I ask you if it is not the general feeling and belief in your county, that a great many outrages have been committed on colored people within the last two or three years?

Mr. GRAHAM. We object to that. It is an attempt to prove particular transactions under the cover of a general question.

Mr. BOYDEN. It is simply in reply. I asked him if he does not know if there have not been a large number of outrages committed on the colored people, if that is not the general opinion.

Mr. GRAHAM. This is an attempt to prove by general

reputation that there has been a great many injuries done to the colored people and preclude any explanation on the subject. I think the question is clearly incompetent and that it would lead to an investigation which would be tedious, and not pertinent to the matter before the court.

The CHIEF JUSTICE. The presiding officer is of the opinion that the facts cannot be proved by general reputation.

Q. Do you know of any secret organization in the county of Alamance under the names which you have heard repeated, or any other names? A. I do not know of any.

Q. Have you seen any persons disguised? A. Never in my life.

Q. Have you seen any persons who have been scourged? A. I never have.

Q. Did you see the body of Outlaw after he was hung? A. No, sir.

Q. Did you see the body of Puryear after he was drowned? A. No, sir.

Q. You have kept clear of all these things? A. I did not see them. I did not know that Outlaw was hung until four or five days afterwards.

Q. You live fourteen miles from the court house? A. Yes, sir, and further from where Puryear was found.

Q. You say you were foreman of the grand jury? A. In June,1869, I think it was.

Q. At which term? A. The spring term.

Mr. BOYDEN. The act to prevent men from going masked and disguised was passed in April, 1869, and we wish to ask the witness the question whether, before he was foreman of the grand jury, he had not heard and did not believe the truth of the numerous charges made of persons having been whipped, scourged and mutilated by persons masked and disguised and, knowing that, if he instituted any investigation into any one of these offences.

Mr. GRAHAM. Put the question in writing.

[The counsel for the respondent reduced the question to writing.]

Q. You say you were foreman of the grand jury at the June term, 1869. Now I ask you if you had not heard of a number of whippings of colored men in the county of Alamance, which statements you believed to be true, and whether with this information and belief you made any investigations?

Mr. GRAHAM. I do not know, Mr. Chief Justice, how far a grand juror's oath may not bind him to keep secret what took place before the grand jury. I have no objection to the question being answered unless that point should be interposed.

Mr. SMITH. It has been expressly decided in this state that a grand juror may be compelled to state what occurred in a grand jury room before a court of justice.

The CHIEF JUSTICE. The presiding officer is of the opinion that the question may be put on cross-examination.

Mr. GRAHAM. You will read the question.

Mr. BOYDEN. The first part of the question is whether you had not heard of whippings before you become foreman of this grand jury at the June term. The next part of the question is whether you did not believe they had taken place. And the third part of the question is whether you made investigation as a grand juror touching these whippings.

Mr. GRAHAM. I prefer the counsel to read his question.

Mr. BOYDEN. I will read it.

Q. You say you were the foreman of the grand jury at the June term, 1869. Now I ask you if you had not heard of a number of whippings of colored men in the county of Alamance, which statements you believed to be true, and whether, with this information before you, you made any investigations as to any of those whippings? A. There were some, but as to the number I am unable to answer.

Q. Go on and give an answer to the balance of the question? A. There was one case investigated, and there was not a true bill found.

Q. There was not more than one case? A. Not to my knowledge.

Q. You had heard of more than one before that court? A. Yes, sir, I think I had.

Q. Were you ever asked by any man to join a secret political association, and if so by whom?

Mr. GRAHAM. I object to the question as not at all relevant to this case. Statements between this witness and anybody else are like any other hearsay matter. I object to any evidence that takes place *inter alios* before the court as not competent.

Mr. BOYDEN. Our object is to establish the fact that there was a secret political organization, and the question is whether any person ever asked the witness to join such a secret political organization, and if so who it was.

Mr. GRAHAM. We understand that. It is about the same thing as this: did anybody ever tell you there was such an association? It clearly can not be answered. This question is simply putting the same thing in a different form.

The CHIEF JUSTICE. I do not think the question is proper.

Re-Direct Examination.

Q. At this June term when you acted as foreman of the grand jury, in June, 1869, the solicited was Mr. Bulla? A. Yes, sir.

Q. You investigated a case—whose case was that? A. A man by the name of Harvey.

Q. Joe Harvey? A. I think his name is Joe.

Q. Was Joe Harvey a colored man? A. Yes, sir.

Q. Did the solicitor send you in a bill in that case? A. Yes, sir.

Q. What was done with it? A. It was found not a true bill unanimously.

Q. Was there any pupose to intimidate the grand jury in that matter? A. No, sir.

Q. They considered the bill not sustained by proper evidence? A. Yes, sir.

Q. And returned not a true bill? A. Yes, sir.

Q. Was there anything said in the grand jury in regard to political considerations to affect their action? A. Not one word. There were men of both parties on the grand jury.

Q. Not one word or allusion was made to political matters in any of your business? A. No, sir.

Q. And every man you say on the grand jury voted to ignore the bill? A. Yes, sir.

Q. There were some colored men on the jury that term? A. I think not.

Q. But there were men called republicans in politics who voted against the bill? A. Yes, sir.

Q. Was there any proposition by any grand juror to send for a witness in relation to any case which was refused? A. None.

Q. None of these republican gentlemen made motions to bring up anybody which were refused? A. No, sir.

Q. Was the business conducted as the business is usually conducted in such bodies under the oath taken? A. Yes, sir.

Q. What is the politics of the solicitor and judge? A. They are republicans—said to be.

Q. There was no bill except the one in the case of Joe Harvey that was rejected? A. Not that I recollect of now—I don't think there was.

Q. What was the politics of the clerk of the superior court? A. He is a republican.

Q. And the majority of the county commissioners? A. They are republicans now.

Q. How were they in January or February, 1870? A. The first election they elected—those that qualified were three conservatives and two republicans. Not long afterwards one of them retired and a republican was put in his place. That made three republicans and two conservatives. Then at the last election the thing was changed and the newly elected officers were sworn in and continued until the judge decided that the old officers had a right to hold over.

Q. The only time there has been a majority of the board that was not republican, was the short term the newly elected ones were in and they remained in until the judge decided the old ones were entitled to hold over? A. Yes, sir, and the term after election until one resigned.

Q. There was a question asked you a while ago about the drawing of the grand jury, and a statement that the judge refused to hold the court because he was not satisfied that the jury had been properly constituted. Do you know what board it was that drew the jury? A. I don't know anything about it, only I heard the argument of court and counsel.

Mr. GRAHAM. We do not care about hearsay.

SAMUEL WHITE, *a witness called in behalf of the Manager, being duly sworn testified as follows:*

By Mr. Graham.

Q. State where you reside and what business you follow? A. I live in Alamance county, Melville township, number 10, and I am a farmer.

Q. State whether in the township in which you live and in the county as far as you know, in 1870, during the month of March and before, what was the state of feeling between the white and black people? A. Very good, as far as I know.

Q. Were they employed in the usual transactions of farming and the like, by the whites? A. Yes, sir.

Q. On contract and for a share of the crops? A. They were employed either as tenants or hirelings. It is the principal labor that we have there to depend upon in our section of the country. We employed so far as I know, all who wanted employment and they got the usual terms in the country.

Q. Do you know of any instance in which colored men were refused to be employed or otherwise to be dealt with on account of politics or the way they voted? A. I do not.

Q. The general condition of your neighborhood as to peace, how was it in February and March, 1870? A. So far as I know it was peace and quiet.

wife and family as by anybody else. My first question is whether his general reputation was not that of an inhuman person towards his own family.

The CHIEF JUSTICE. The presiding officer is of the opinion the question cannot be answered. It would be carrying the question of reputation too far.

Q. You say you knew him. In what respect was his character bad? A. In almost every other respect, sir. He was a rogue, a notorious liar and he was notoriously intemperate when he could get anything to drink.

Q. He was a liar and a drunkard? A. That was his character.

Q. Had he any prominence in politics that would have made him a victim of political opposition? A. I should think not. I don't think Bill was a man who meddled much in political affairs. I never heard of him having anything to do with it or anything about it.

Q. Do you know whether he was insane and confined as an insane man? A. I so understood. I never saw him in that condition. I have heard it frequently spoken of by his old master and others.

Q. What time did Puryear's death occur? A. I can't say precisely, but it was either late in the winter or early in the spring.

Q. Was it before or after the death of Outlaw? A. Shortly after that, I can't say precisely how long.

Q. Was he seen after the death of Outlaw or was he missing before? A. It was after the death of Outlaw that he was missing.

Mr BADGER. Seen by whom?

Mr. GRAHAM. By him or any body else?

By the CHIEF JUSTICE.

Q. Did you see him after Outlaw was hung? A. I did not.

Q. How shortly after was it that he was missing, a few days or weeks? A. I don't think it could have been many days, but as to the length of time I cannot say positively.

Q. You think it was a few days after the death of Outlaw

that his body was found? A. That he was missing. It was some two or three months before his body was found.

By Mr. GRAHAM [resuming.]

Q. He had been missing for some considerable length of time? A. Yes, sir, some time.

Q. Do you know of there being any resistance to law in Melville township, either to the United States or to the state law? A. I do not, I have never heard of a single instance.

Q. There are magistrates and justices of the peace in your township? A. Yes, sir, duly elected in 1869.

Q. And constables? A. Yes, sir.

Q. Did you ever know of any application being made to any justice or magistrate for a state's warrant by anybody and refused? A. I never did.

Cross Examination

By Mr. BOYDEN.

Q. Did you see the body of Outlaw shortly after he was killed? A. No, sir, he was found on Saturday and the inquest was held that day and I never heard of it until the next day.

Q. You never saw the body after his death? A. No, sir.

Q. How long after that was it before you heard this other man was missing? A. I thought it was Puryear you were speaking of, as to Outlaw, I don't know. I live some distance from Graham.

Q. But you know about Outlaw's death? A. Yes, sir.

Q. How long after that did Puryear disappear? A. I can't say precisely, but it was not a great while.

Q. Three or four days? A. I suppose it must have been that long.

Q. Is that your judgment? A. I have no certain recollection as to the time.

Q. According to your best recollection as to the time, do you think it was more or less than three or four days? A. I can't say anything positive as to the length of time.

Q. Did you see his body after he was found? A. Do you mean Puryear?

Q. Yes? A. No, sir.

Q. Did he live in your neighborhood? A. I suppose it is about four miles from where I live.

Q. You did not know anything about his death personally? A. Nothing about it personally.

Q. Do you know about any other person being whipped or scourged or beaten? A. Not of my own personal knowledge.

Q. Have you seen any body who showed you marks of having been whipped? A. I have not.

Q. You have no knowledge then by having seen them or having seen the marks of whipping and scourging in your county? A. I have not.

Q. Do you know anything about a secret organization political or otherwise to set things to rights in Alamance county? A. I have no personal knowledge of any organization of that kind.

Q. You never saw them going about? A. I never did.

Q. You never saw them going about disguised? A. I never saw any man disguised, and I never saw any man who I had any reason to believe belonged to anything of that sort.

Q. Have you seen bodies of men going about at night? A. I have not. I never saw anything of the kind.

Q. You do not know anything about the causes or circumstances attending the death of Puryear? A. I do not.

Q. You say he belonged to your father-in-law? A. Yes, sir.

Q. When he was a slave? A. Yes, sir, and he was living on his land before he was missing.

Q. Do you give the opinion of the community as to Puryear, or do you give your own opinion as to his character? A. I give both.

Q. Has he a general reputation among his acquaintances and friends such as you gave him, or have you given your own individual opinion of him? A. That is the opinion entertained by all who knew anything about him.

Q. Is that his reputation among those of his own color? A.

So far as I know it was. I never heard them say much about him.

Q. You never heard them say anything about him? A. Not a great deal. I have heard them speak of his character, and that is the character they gave him.

Q. Have you heard enough of his own color speak of him to give him a general character? A. I should think I have.

Q. How many did you ever hear speak of him—I mean of his own color? A. I can't say positively as to that.

Q. As many as two? A. Yes, sir.

Q. How many do you suppose? A. I could not say the number. It may have been more or it may have been less.

Q. You said something about his mind having been disordered—that he was crazy? A. Yes, sir, that was the general report that he was crazy. I never saw him while he was in that condition.

Q. But you stated that he was a crazy man.

Mr. GRAHAM. He did not say that he was of his own personal knowledge—he had never seen him in that condition.

Q. Was that his reputation? A. Yes, sir.

Q. Do I understand you to say that his reputation being that of a crazy man, he was also reported to be a bad man and a liar? Is that the reputation which a crazy man has? A. That was the reputation which he had before that. It was only within the last two years that I heard of his being crazy.

Q. During the whole two years? A. Not the whole of it, but during that time.

Q. You don't have reference to that time as to his having borne that character—you speak of him before that? A. Before that and at all times.

Q. So he bore the character of a thief and a liar at the time he was also understood to be crazy?

Q. [By the Chief Justice.] What time was he crazy—continually, or off and on? A. I never saw him in that condition, and I cannot speak of my own knowledge as to what his

condition was. I understood that a part of the time he was confined in a jail at Graham.

Q. As a lunatic, on account of his craziness? A. Yes, sir; he was considered at that time in rather a dangerous condition. He was abusive to his own family and dangerous. He was violent, I understood.

Q. What political party do you co-operate with—vote with? A. I vote with what is called the conservative party—what is known as that party now.

Re-Direct Examination.

By Mr. Graham.

Q. You are a brother of Stephen White, who was elected to the legislature by the republicans? A. Yes, sir, I am.

Mr. BOYDEN. We object to the question.

Q. In regard to Puryear, did he recover his senses before his death—and if so did you see him at any time after he had recovered? A. I recollect seeing him at times at Mr. Puryear's farm at work. He had him employed after he got well. He had recovered sufficiently to go to work as a laborer on the farm.

Q. Your father-in-law, who formerly owned him, employed him to work for him? A. He was living on his place and employed on his plantation at the time. I understood at that time he was making a very good hand on the farm.

WILLIAM J. MURRAY, *a witness recalled on behalf of the Managers, testifies as follows:*

By Mr. Graham.

Q. Did you know this man Puryear was confined as a lunatic in jail of Alamance? A. Yes, sir.

Q. What time? A. He was in there a few days, it strikes me, in 1869.

Q. What was he in for? A. He seemed to be in a deranged state.

Q. Was he committed on a peace warrant or was he simply

confined as a lunatic? A. He was not committed on a warrant at all, I think.

Q. What was done with him? A. He remained a few days and the commissioners sent him to the poorhouse, where he could be kept cheaper.

Q. He was sent there accordingly? A. Yes, sir, the manager of the poorhouse took possession of him at the jail. I gave him to the manager.

Q. Did he confine him? A. Yes, sir.

Q. And carried him to the poorhouse? A. He started with him.

Q. How long was he there to your knowledge? A. I don't remember, I don't think he was there a great while—how long I don't remember exactly.

Q. Some months? A. I suppose two months, it may have been not quite so much or it may have been a little longer.

Q. Were his actions that of a crazy man? A. Yes, sir.

JEREMIAH HOLT, *a witness on behalf of the Managers, being re-called, testified as follows:*

By Mr. Graham.

Q. Did you know this black man Puryear? A. I never saw him but once, that is to know him. He was then in a distracted condition.

Q. Under what circumstances? A. Doctor Freeman was well acquainted with him. We were standing in the street in Graham and he had had some little trial and Doctor Freeman had done him a favor. As he passed by us, there was a black man leading him by a line and he told him to stop and he raved out that there was Doctor Freeman, that he would always respect him. Doctor and I were standing close together, and the man chatted right smart awhile with him; when he was done they carried him to the poor house, at least the man said he was going to take him there.

Q. Did he act like a crazy man? A. Yes, sir. He was hallooing and singing and dancing and cutting up shines.

Q. This black man was leading him off towards the poor house and he discovered Doctor Freeman who was an acquaintance of his, and he stopped and said he would always respect him, and he capered around like a foolish or crazy person? A. Yes, sir. He doubled up his first and said "I will always respect you."

Cross-Examination.

By Mr. Boyden.

Q. What political party do you belong to? A. I never belonged to any society except a debating society?

Q. I said what political party? A. I always voted with the old whig party, and I expect to die there. [Laughter.]

Q. What side do you vote with now, the conservative or republican? A. I vote the conservative ticket.

WILLIAM GILLIAM, *a witness called on the behalf of the Managers, being duly sworn, testified as follows:*

By Mr. Graham.

Q. Where do you live? A. In Alamance.

Q. What is your age? A. 54 years last September.

Q. What business do you follow? A. Farming.

Q. In what township do you live? A. Morton.

Q. Near the Caswell line? A. Yes, sir.

Q. State to the court what was the feeling in February and March, 1870, between the white and black races in your neighborhood--was it friendly or unfriendly? A. The feeling was very good as far as I know.

Q. Was that the general reputation of the country? A. Yes, sir, general as far as I know. I don't know any difference except with reference to some that were low down.

Q. Any worthy colored man was treated with kindness by every body? A. Treated with respect.

Q. Did they have business transactions in the way of making contracts for work? A. Yes, sir, the freedmen made their own contracts, and the whites with them.

Q. Sometimes they got wages, sometimes they got a share

of the crop and sometimes they rented land? A. Yes, sir, they did their own trading without any prohibition in any way.

Q. So a man was a reliable man, was he contracted with and trusted as a white man would be of the same standing? A. So far as I know, and I heard of no difference.

Q. Were they in any way unsafe by reason of voting the republican ticket? A. Not at all.

Q. Did you know of any resistance to the officers of the law in your county. A. Not at all.

Q. The taxes were gathered in your township and county as they were anywhere else without any resistance? A. Without any resistance at all. There was no interruption at all in any respect—that is, about politics or voting. Sometimes they would drink a little too much.

Q. Was any attempt made to resist the law in the collection of taxes or any thing else? A. No, sir. I have been connected with the township trustees for two years and I have never heard any complaint in any respect.

Q. You are one of the township trustees? A. I am one of the school committee, connected with the township trustees.

Q. Constantly in intercourse with the township trustees? A. Yes, sir.

Q. You say there was a general state of safety for colored men or republican white men as there was for others? A. I saw no difference.

Q. Do you know of any violence used to control the votes of these colored people, or those of anybody else? A. No, sir, I do not.

Cross-Examination.

By Mr. Smith.

Q. Do you know of any acts of violence committed on any colored people, or any others, in the county of Alamance? A. Not of my own knowledge, only just from hearsay.

Q. Have you never seen any one whose body presented the

marks of violence? A. No, sir, I never did. There is a man in our neighborhood who is said to have been whipped.

Q. Did you hear his screams whilst he was in the process of being whipped? A. I saw him a month or two afterwards.

Q. Did you notice any scars or marks of recent whipping about him? A. No, sir.

Q. You never made any examination? A. No, sir, none at all.

Q. Do you know of any secret associations, whether called by any names, in that county? A. No, sir.

Q. Have you ever seen persons going about disguised? A. Never.

Q. You have never seen crowds of persons going about at night? A. Not in disguise. I have seen persons coming from a frolic, from a raising or a corn husking.

Q. Did you see the bodies of Outlaw or Puryear after their death? A. No, sir, I did not know them before.

Q. How far off from the place where they lived do you live? A. It is ten miles from my house to Graham and how far it was to their place I do not know, it is still further I suppose.

Q. Have you any personal knowledge of any of these organizations? A. No, sir.

Q. You have never had any connection with them yourself? A. No, sir.

Q. What political party have you voted with? A. With the democratic party all my life.

DAVID W. KERR, *a witness called on behalf of the Managers, being duly sworn, testified as follows:*

By Mr. Graham:

Q. Where do you reside? A. I reside in Melville township, No. 10, I think—Alamance county.

Q. What is your age? A. 57.

Q. What is your pursuit? A. A farmer.

Q. State to the court what were the relations between the black and white people in your township as far as you know in

February and March, 1870? A. The feeling in general was a kindly one.

Q. The usual contracts of business were made between them? A. Yes, sir.

Q. They were principally in the employment of farmers? A. Yes, sir, either as laborers hired by the month or year or day on shares.

Q. Was there anything in the state of society there that made it unsafe for them? A. I think not.

Q. Neither to life nor liberty? A. I think not.

Q. Were they unsafe in matters of property—any likelihood of their being deprived of their property? A. They were not in my opinion.

Q. Do you know of their suffering any violence in the effort to control their votes or because of their politics? A. None, in my knowledge.

Q. Was there any resistance to the law in the county or the township to your knowledge within the last two years. A. None.

Q. Is your township suppled with magistrates? A. Yes, sir.

Q. What is the politics of your magistrates? A. In the township where I live the magistrates and constables are republicans.

Q. Both magistrates and constables? A. Yes, sir, both.

Q. Do you know of any instance of a magistrate being appled to for a state's warrant for a black man, for any man, black or white, who made the proper affidavit that he was refused? A. I do not.

Q. Did you know this man Puryear? A. Only by character.

Q. Do you know his general character? A. I have heard it spoken of frequently within the last year or two.

Q. While he was living did you know what his character was? A. Yes, sir, since his derangement was the first time I ever heard of it—at the time he was deranged.

Q. What was his reputation at the time and what has been

his character since that time? A. I don't know that I heard it spoken of at that time in that respect. I have heard it spoken of since.

Cross-Examination.

By Mr. SMITH:

Q. Have you known any acts of violence in that part of the county towards the colored men? A. No, sir, not that I know of.

Q. Have you never seen a person who has been whipped, after he had been whipped? A. I have seen persons that were reported to have been whipped.

Q. Have you seen them after they have been whipped. A. No, sir.

Q. Never examined them? A. No, sir.

Q. Never saw any marks or scars or bruises about them? A. I have not.

Q. Did you see the bodies of these two men who were killed? A. No, sir.

Q. You never saw Puryear's body or Outlaw's body after their death? A. No, sir.

Q. Do you go much about that part of the country? A. Not very much. I stay pretty closely at home.

Q. You spoke of hearing of things about there. Why is it, if you go about much, you have never seen any of these things? A. I don't understand what things you allude to.

Mr. GRAHAM. He says he does *not* go about much.

Q. I misunderstood you. You don't go about much? A. No, sir.

Q. You know very little of what is going on about the county except what you hear? A. Only what I hear.

Q. Do you know any thing about these secret organizations? A. I do not.

Q. You have never had any personal connection with them yourself? A. No, sir.

Q. Have you ever seen persons going about disguised? A. I have not.

Q. Neither in the day or night? A. No, sir.

Q. Have you ever seen any of the disguises? A. No, sir.

Q. Do you go out at night at all, I mean in the sense of not being at a distance? A. I sometimes go to my neighbor's house or some of my friends and remain until towards bed time.

Q. You don't go about except to your neighbors, to visit them occasionally? A. Sometimes I may be late in getting home when I am out of my neighborhood.

Q. Have there been any outrages around in that neighborhood that you know of? A. None that I know of.

Q. In that immediate part of the country? A. No, sir.

Q. What portion of the county do you reside in? A. Directly east of the town of Graham on the east side of Haw river.

Q. Is that the eastern part of the county? A. It is east of the central part—three miles.

Q. How far from Graham? A. Three miles in a direct line and four and a half miles by road. It is circuitous.

Q. You have to cross the river? A. Yes, sir.

Q. Were you there at the time Outlaw was found hung? A. No, sir.

Q. You did not go over? A. No, sir.

Q. When did you first hear of it? A. I cannot be positive when I heard of it, whether the next day or not—whether it was Sunday evening or Monday, but I heard of it a day or two afterwards.

Q. You did not go over to see or inquire anything about it? A. No, sir.

Q. You remained at home? A. Yes, sir.

Q. What party do you belong to? A. The conservative party.

Q. You have always voted with them? A. Yes, sir, always.

Re-Direct Examination.

By Mr. Graham.

Q. I believe you held a commission as justice of the peace in former years? A. Yes, sir.

Q. How many years? A. I suppose five or six years.

Q. Have you also acted as a juror? A. Yes, sir.

Q. Were you also a candidate for the legislature, and in that way also became extensively acquainted with the country? A. I was a candidate in 1869 for the senate in that district.

JONATHAN NEWLIN, *a witness called on behalf of the Managers, being duly sworn, testifies as follows:*

By Mr. GRAHAM.

Q. Where do you live? A. In the county of Alamance, twelve miles south of Graham.

Q. On the Haw river? A. Yes, sir.

Q. What is your business? A. I am engaged in manufacturing cotton, selling goods, milling, &c.

Q. And farming? A. Yes, sir.

Q. State what is the feeling in that part of the county between the two races, the whites and blacks, and what was it in 1870—the early part of the year? A. I think it was good.

Q. Were there the usual business relations between them of employers and employer? A. Yes, sir.

Q. They were generally farmers, and sometimes mechanics? A. Yes, sir.

Q. They got employment in these vocations from the white people in that township? A. Yes, sir.

Q. Do you know of any instance in which a man was refused employment on account of his not voting as the white people wanted him to? A. None.

Q. Do you know of any instance where favors were denied colored people when they were in distress or sickness? A. None.

Q. Was or was not the black men as safe as white men in the ordinary course of things? A. Just as safe in my opinion.

Q. Do you know of any attempt by force to control them in their votes? A. None to my knowledge.

Q. Do you know of any resistance to the law, either federal or state?—A. None sir.

Q. You are a tax-payer yourself to a considerable extent, ng engaged in manufactures to the federal government; xes are collected, both federal and state, without resistance in our township? A. Yes, sir.

Cross-Examination.

By Mr. BOYDEN.

Q. Have you knowledge of any secret political organization in the county of Alamance? A. I have not.

Q. Do you know of any outrages having been committed upon white persons or colored persons, within the last two or three years? A. I do not.

Q. Have you seen no person who has been whipped or scourged or mutilated? A. None to my knowledge.

Q. What I mean is, have you seen persons with marks or bruises on their bodies subsequent to their being whipped? A. I have never seen any marks.

Q. Did Mr. Shoffner live near you? A. He did not.

Q. He did not live in your township? A. He lived just twelve miles from me to the north-west.

Q. Do you know he has left the county? A. I only know reports that he has left the county.

Q. Do you know what caused him to leave the county. A. I do not.

Mr. GRAHAM. The question propounded is not competent.

Mr. BOYDEN. It will be competent if he knows it.

Q. Have you seen any man in your county having what called the kuklux disguise? A. I never did.

Q. What political party do you act with now? A. T conservative.

Q. You have been asked what is the state of feeling betw the colored and white races within the last year. How w the year before and the year before that? A. It has al been good in my neighborhood.

Q. Every since the close of the war? A. Yes, sir.

Q. You know of no one being refused labor or turned off because he would not vote with the man who hired him? A. No, sir, I do not.

The hour of half past one having arrived, the court adjourned to to-morrow at 11 o'clock.

THIRTEENTH DAY.

SENATE CHAMBER, Feb. 10th, 1871.

The COURT met at 11 o'clock, pursuant to adjournment. Hon. R. M. Pearson, chief justice of the supreme court, in the chair.

Proceedings were opened by proclamation made in due form by the door-keeper.

The CLERK proceeded to call the roll of senators when the following gentlemen were found to be present:

Messrs. Adams, Albright, Allen, Barnett, Battle, Bellamy, Brogden,, Brown, Cook, Council, Cowles, Crowell, Currie, Dargan, Eppes, Flemming, Gilmer, Graham, of Alamance, Graham, of Orange, Hawkins, Hyman, King, Latham, Ledbetter, Lehman, Linney, Love, Mauney, McClammy, McCotter, Merrimon, Morehead, Murphy, Norment, Olds, Price, Robbins, of Davidson, Robbins, of Rowan, Skinner, Speed, Troy, Waddell, Warren, Whiteside, Worth—47.

Senator ROBBINS, of Davidson, moved that the reading of the journal of the proceedings of yesterday be dispensed with.

The CHIEF JUSTICE put the question on the motion of the senator from Davidson, and it was decided in the affirmative.

RICHARD THOMPSON, *a witness called on behalf of the Managers being duly sworn, testified as follows:*

By MR. GRAHAM.

Q. What is your name? A. Richard Thompson.

Q. Where is your home? A. In Alamance county.

Q. Do you know a man by the name of Henderson Coble in that county? A. Yes, sir.

Q. Is he any relation of yours? A. Yes, sir, he is my uncle.

Q. Do you know of Henderson being whipped? A. Yes, sir.

Q. Where was it? A. At his home.

Q. Who whipped him? A. Allen Paisley.

Q. Where is Allen Paisley? A He is in the penitentiary.

Q. Is Allen Paisley a colored man? A. Yes, sir.

Q. Tell how he came to be whipped, how happened you to be there?

Mr. BOYDEN. The witness has not stated that he was there.

Q. Were you there at the time he was whipped? A. Yes, sir.

Q. How did you happen to be there and who was along besides Paisley and yourself? A. I was at work for Jim Foust.

Q. He is a black man? A. Yes, sir. I was sitting by the fire at supper and was studying my spelling book, and after awhile, in the night, Oscar Albright, Allen Paisley and Duke Hatmaker came over and they said to me, "Thompson I want you to go with me on a journey." I said, "Where?" He said, "I want you to go to Henderson Coble's." I said, "What for?" He said he was going to give him a whipping. I said, "I don't want to go."

Mr. BOYDEN. I do not think this conversation is competent.

Mr. GRAHAM. We expect to show that these three men came there and prevailed upon the witness to go with them on an expedition to whip Coble, and anything that was said in execution of the design is competent. We expect further to prove that Paisley had disguises prepared, long gowns and caps and some paraphernalia of that kind, and went on to execute their purpose.

The CHIEF JUSTICE. The presiding officer thinks the evidence is competent.

Q. [By the Chief Justice.] Begin again. When they came to your house and asked you to go with them what took place? A. Allen Paisley, Duke Hatmaker and Oscar Albright came over to Jim Fousts and went in. I was working at Jim's. Paisley said, "Thompson, I want you to go on a journey." I said, "Where to?" He said, "To Henderson Coble's." I said,

"What for?" He said, he wanted to give him a whipping. I said, "I don't want to go." He said, "You must go." I said "I wont go." Then Jim Foust drew a club and Paisley cocked his gun and said, "If you don't, I will kill you right here." I thought rather than be killed I would go. Then he put Albright and Jim Foust to guard me.

Q. To guard whom? A. To guard me.

By Mr. GRAHAM.

Q. Was it at Jim Foust's? A. Yes, he was guarding me. Then he went down tc the woods and got four caps.

Q. Paisley? A. Yes, sir, he brought them up there.

Mr. BOYDEN. The witness certainly did not go down with Peasley.

Q. [By the Chief Justice.] He went down to the woods and brought up what? A. Some caps.

Q. Paper, or what? A. I don't know exactly what they were; they looked sort of white and blue. It was after night, and I could not tell exactly.

Q. Did they cover their face and heads? A. No, they came right about here, [indicating over the forehead,] and then they had a face to go on.

Q. A masked face? A. Yes, sir.

Q. He had a cap or something that covered his head? A. Yes, sir.

Q. Could you know a man when you saw him with one of these caps on and a mask, or did it hide his face? A. It hid his face, and you could not tell who it was.

Q. How was Paisley dressed after he put on this cap and mask? A. He had on a sort of a white looking gown that come down here. It looked white—I could not tell what it was.

Q. He had on a white gown and his face was covered? A. Yes, sir, it looked white.

Q. Did you take it to be white? A. I thought it to be white—I took it to be.

Q. You thought this gown was a white one? A. Yes, sir.

Q. Did he have any gowns for the rest of you? A. The other two men, Jim and Duke Hatmaker, one had an old blanket and the other an old white petticoat, I think.

Q. That was Jim Foust and Duke Hatmaker. A. Yes, sir.

Q. One had a sort of gown, one a petticoat, and one a blanket? A. Yes, sir.

Q. How did they manage with you? A. They made me take off my shirt and put it on the outside of my coat—they made Albright and me.

Q. You stripped down to the buff and began to put your clothes on wrong side out? A. Yes, sir.

Q. They made you do that? A. Yes, sir.

Q. The whole party consisted of Paisley, Duke Hatmaker, Oscar Albright, Jim Foust and yourself? A. Yes, sir.

Q. They had but three gowns and they made you and Jim Foust put on your shirts outside of your coats? A. Yes, sir, me and Oscar Albright put on our shirts that way.

Q. Did they have any cap for you? A. No, sir, they did not have but four caps and Paisley said. "What shall we do?" "He said, "Thompson has got a pair of saddle pockets, won't they do," Jim did. Paisley said "Yes," and told him to bring them out. Jim went in and brought the saddle pockets out and gave them to Paisley, and Paisley went and made a cap. Duke and Jim guarded me while Paisley was gone to make the cap. They made the cap and put it on Albright, and then they went to an old field and stopped there, and he said, "Now you have got to swear that you will never tell, and "if anybody asks you, to say you don't know anything about "it," and that he would kill anybody that told, and that if he did not do it, he had another company at Graham who would.

Q. He told you to never tell and swore you not to do it, and if you did he would kill you, and if he did not somebody else would? A. Yes, sir.

Q. You started on after getting the dress, for Henry Coble's? A. Yes, sir.

Q. Describe what took place at Henderson Coble's? A.

When we went to Henderson's they knocked at the door and made him come out of his house. They asked him if he belonged to the league or had anything to do with the league.

Q. Who asked that? A. Paisley did. I don't know whether he said he belonged to the league or not. I cannot say positively, but he asked him about his going about and telling stories about the county, and he said he was going to give him a whipping for it. Then he commenced whipping him and he made him get on his knees, and he whipped him right smart, and he begged and commenced praying. After be got up, he said, if you go a squirrel hunting don't keep your gun loaded at night.

Q. If he went squirrel hunting he must shoot off his gun and not keep it loaded at night? A. Yes, sir. He told him he would do it. Then he whipped him some more. Then he said "Have you got any meat?" He said "Yes." He said "What sort?" He said "I have got some middlings." He said "Haven't you got some ham?" He said "No." He told him he might keep it then.

Q. Did he take off his clothes when he whipped him? A. No, sir, he was in his shirt-sleeves.

Q. He had nothing on but his shirt? A. Yes, sir, that was all. I forget whether he asked him anything else or not.

Q. Was he whipped pretty severely? A. Right smart. Then he went on from there to Uncle Tom Woods'.

Q. Let us get through there first. Did Paisley and the rest of you go into the house? A. No, sir, we never went into the house.

Q. Did he have any conversation with Henderson's wife? A. He had no wife?

Q. Was anybody in the house besides Henderson? A. His little boy as far as I know. If there was anybody else I don't know.

Q. Did you hear Paisley say anything about his being a "Ku Klux" at the time—did he ask Henderson if he had ever

seen the "Ku Klux" before? A. He did not ask Henderson that. That was at uncle Tom Woods'.

Q. They went in you say, and made Henderson come out, asked him these questions and gave him a severe whipping? A. Yes, sir.

Q. Then they went to Tom Woods'. What took place then? A. We hallooed at the door and made him come out and said, "Did you ever see Ku Kluxes"? He says "No." He says, these was "Ku Kluxes." He said, "We have a hickery"—he said, "tell your wife to get up and come out." She come out and he asked her if she had ever seen Ku Kluxes, and she said she had not, and he told her that these was Ku Kluxes. He said, "Why haven't you got the free school started?" He said "The folks had concluded not to put it up until fall, that they were not ready. He said, "No, you are the cause of it, "and if you don't start that school in three weeks we will come "down and whip you;" and he said if they don't finish that church they intended to burn it up.

Q. Were the people building a meeting house in the neighborhood at the time? A. Yes, sir.

Q. The colored people? A. Yes, sir. He told him he must start a colored folks' school and a white folks' school.

Q. Woods said the reason why they did not start the school was because they were not quite ready, and Paisley said if they did not commence it in three weeks he would come down and whip him, and if he did not finish the church he would burn it up? A. Yes, sir.

Q. Where did they go then? A. To Monroe M. Freeland's.

Q. A colored man? A. Yes, sir. They went and hallooed and told him to come out. Uncle Monroe Freeland, he got out of bed. They said "What are you doing?" He said that he was doing nothing only putting on his pants, and would be out. He came out and Paisley said "Didn't you and Hinton "Roberts steal a bull sometime ago?" He said no, he didn't but that they were accused of it.

Q. Is Hinton Roberts a black man? A. No, sir, he is a

white man. He said they were accused of it but they did not do it. Then Paisley said he was going to give him a whipping, and turned in and commenced whipping him. He called on all the fellows around to go in and give him five licks apiece, but they wouldn't do it. He turned in and went to whipping him himself.

Q. Paisley? A. Yes, sir. He whipped—I don't know how much but he whipped him right smart. After he had whipped him he asked where his son Mike was. He said he was upstairs in bed. He made Mike come down. He asked him something about his going to see a girl in the neighborhood; that he would have to hurry up and marry her or he would whip him. Then he whipped Mike right smart. He said that Mike had told stories on him.

Q. Did he do anything more that night? A. Yes, sir. When we left uncle Tom Woods' we went down to his son-in-law's. He and uncle Tom Woods' son-in-law had had some falling out. His son-in-law was not in; and he told his wife that he was going to leave a hickory to whip him with.

Q. Nothing else done that night? A. Then we went back to the old field close to Jim Foust's, when we left and went into the woods, and after we had pulled off the gowns I do not know what he did with them, but we staid there and he told Jim to go to the house and see if there was anybody there, he was to whistle. We took the clothes off but whether he took them in the woods or not I don't know.

Q. Did you see anything more of him that night? A. No, sir.

Q. Were you taken up about this? A. Yes, sir.

Q. How was that done, by a constable or officer? A. Yes, sir.

Q. Who took you? A. Uncle Henderson Coble and Monroe Freeland——

Q. I mean who took you up and carried you before the court? A. Mr. John Ray.

Q. Is he a constable? A. Yes, sir.

Q. What justice of the peace were you carried before? A. Mr. Wylie Neese and Seymour Olds.

Q. They were justices of the peace? A. Yes, sir.

Q. Were you examined and then put in the jail? A. Yes, sir.

Q. And kept there until court? A. Yes, sir.

Q. And then you were sentenced by the judge to the penitentiary? A. Yes, sir.

Q. The men that were with you that night were all colored men? A. Yes, sir.

Q. And the men you whipped and whose houses you went to were those of colored people? A. Yes, sir.

Q. What time was this, Dick? A. When this whipping took place?

Q. Yes? A. It was in February, somewhere along there; I don't know exactly what time it was.

Q. February of last year? A. Yes, sir.

Q. When were you taken up—how long afterwards? A. We were taken up—this was done on Friday night, and they took us up on Saturday, before twelve o'clock.

Q. How did they happen to take you up—did Henderson Coble have it done? A. Yes, sir, he and Uncle Monroe Freeland came there and had us taken up, as far as I know.

Q. When you were brought before the 'squires was Henderson there? A. Yes, sir.

Q. He was examined as a witness? A. Yes, sir.

Q. After they had heard what he swore to about it they sent you to jail? A. Yes, sir.

Q. You whipped how many that night? A. Three.

Q. Paisley did all the whipping himself? A. Yes, sir.

Q. Your party consisted of five? A. Yes, sir.

Q. That is, there was Paisley, Hatmaker, Albright, Jim Foust and yourself? A. Yes, sir.

Q. Are they all in the penitentiary now? A. No, Jim and Duke run away.

Q. All that did not get away are in the penitentiary? A. Yes, sir.

Q. Did anybody attempt to prevent you from being arrested by the constable? A. No, not as I know of.

Q. Did any company gather to prevent the constable from taking you before the magistrate or to jail afterwards? A. No, sir, not as I know of.

Q. What is Paisley's calling—what is his business? A. He followed teaching school and preaching.

Q. Was he going to teach that free school in that neighborhood which he wanted to have started so quickly? A. Yes, sir.

Q. He is now in the penitentiary? A. Yes, sir.

Q. Do you know how those men voted—Paisley, Hatmaker and the other men of the company?

Mr. BOYDEN. Do you mean whether he saw them cast their votes? I insist that the witness should speak of his own knowledge? A. I do not know how they voted. I heard them say, but did not see it myself.

Q. Did they belong to the league? A. Paisley said he did.

Mr. BOYDEN. That is clearly inadmissible.

Q. I do not care about what he said. Did you ever see him in a league meeting? A. Yes, sir.

Q. Did you ever see him in the league, marching about in their processions? A. I saw him at a big dinner and marching about there.

Q. What big dinner was that? A. It was in Graham.

Q. You saw them marching? A. Yes, sir.

Q. What they called the "Loyal League?" A. I forget now what league they called it.

Q. It was a league? A. Yes, sir.

Q. All black people, or some white? A. Some black and some white.

Q. Did they wear any sort of badges or marks of any kind? A. I forget whether they did or not. I think some of them had some ribbons tied in their coats.

Q. Was Paisley at the dinner? A. Yes, sir.

Q. And he was marching with them? A. Yes, sir.

Q. Did he wear a ribbon? A. Yes, sir, he had on a ribbon.

Q. How was it with Jim Foust? A. I don't know how it is about him. I never saw him at one of these.

Q. Was Oscar Albright? A. Not as I know of.

Q. This other man, Hatmaker, was he there? A. I never saw him there.

Cross-Examination.

By Mr. Boyden.

Q. What is your name? A. Richard Thompson.

Q. How old are you? A. I think I am going on twenty.

Q. Where do you live? A. I live in Alamance county.

Q. With whom do you live? A. I used to live before I was taken up with a man named William Thompson.

Q. With whom do you live now? A. I am staying in the penitentiary.

Q. Before you went there with whom did you live? A. With William Thompson.

Q. When did you go to the penitentiary. A. I went there in June last.

Q. You lived with William Thompson at the time you went out this night you have been a talking about? A. Not at that time, I was staying with Jim Foust.

Q. Jim Foust is a colored man? A. Yes, sir.

Q. And Duke Hatmaker? A. Yes, sir.

Q. They were all colored men that went along that night? A. Yes, sir.

Q. When did you first tell this story you have been telling here to-day. A. I told the same thing last year.

Q. Who was the first person you told it to? A. I think Mr. McAdam was the first man.

Q. How did you happen to tell him? A. He had me to tell it to him there at the time of the court.

Q. You told him at the time you were tried? A. Yes, sir.

Q. That was the first time you told it? A. That is the first time. I stated it all over to him.

Q. Was he your counsel—did you employ him as a lawyer? A. Yes, sir.

Q. And you told him of it? A. Yes, sir, I told him of it.

Q. Who did you next tell of it? A. I told the jailor some part of it, and to Mr. Thompson when he came up there.

Q. Which party does Mr. McAdam belong to? Is he a democrat or republican? A. I do not know which party he belongs to.

Q. Do you know whether Mr. Thompson belongs to the republican or the democratic party? A. I do not know which he belongs to.

Q. Have you ever sworn to this matter before? A. Yes, sir.

Q. Where were you sworn? A. I was sworn at Graham.

Q. Before whom were you sworn? A. I do not know who the man was who swore me.

Q. Where were you when you made oath—at whose house or whose room? A. I was sworn in the court house.

Q. How happened you to swear there—were you made a witness in that trial? A. Yes, sir, they took us for state witnesses at the court.

Q. Were you in the penitentiary then, when you took your oath? A. No, sir.

Q. Had you been in the penitentiary before you were sworn? A. No, sir.

Q. You say they made a state's witness of you? A. Yes, sir, that is what they told me, they made a state's witness.

Q. Did you put your hand on the Bible and swear? A. Yes, sir.

Q. Then you told the whole story? A. Yes, sir, I told what I knew about it.

Q. Have you ever been sworn about it at any other time before to-day, since that? A. Yes, sir, I think they took us for witnesses at Mr. Neese's.

Q. What did you swear to there—did you deny it before him? A. We denied it before him.

Q. You swore to a lie about it, then? A. They took us——

Q. You swore to a lie about it, did you? A. No, sir; they had witnesses——

Q. Answer my question—did you swear to a lie then? You say you were sworn. Did you tell a lie about it? A. I denied it—I said I didn't.

Q. Was not that a lie?

Mr. Manager SPARROW. The witness means to say that they had an examination, not that he was sworn.

Mr. BOYDEN. He means to say no such thing. He says he was sworn on the Bible.

By the CHIEF JUSTICE.

Q. Did you put your hand on the Bible before Justice Neese? A. Yes, sir, they had us put our hands on the Bible.

Q. Mr. Boyden asks you if you did not deny having been along with this party, whether you told the truth. A. We denied it.

By Mr. BOYDEN [resuming.]

Q. You all swore to a lie? A. I just ——

Q. Just answer it right out. You all swore to a lie? A. I do not know whether we swore to a lie; we told them we didn't do it?

Q. You do not know whether that was a lie or not? A. Yes, sir, we told him a story.

Q. I ask you if you were ever sworn at any time before to-day when you gave a statement about the matter, and when you did not tell a lie, but told how it was? A. Yes, sir.

Q. Where was that? A. We told it at the court house.

Q. At what court house? A. At Graham.

Q. When? A. Last year.

Q. What time? A. It was in June.

Q. Were you sworn then? A. Yes, sir.

Q. Who swore you? A. I don't know who it was swore me.

Q. Did you put your hand on the bible? A. Yes, sir.

Q. And you were sworn? A. Yes, sir.

Q. Where were you in the court house? A. Up in the court house.

Q. In the court room? A. Yes, sir.

Q. What was going on—how happened you to be sworn then—who was on trial? A. Me and Adam Paisley and Oscar Albright.

Q. They swore you in your own cause did they? A. Yes, sir, I reckon that is the way it was done.

Q. They made you tell all about it? A. Yes, sir.

Q. And you were convicted and sent to the penitentiary. A. Yes, sir.

Q. And that was in Alamance? A. Yes, sir.

Q. That such a thing was done? A. Yes, sir.

Q. No mistake about that? A. None at all.

Q. Don't misunderstand me. I don't want to get you in any difficulty. You say you were on trial in the superior court? A. Yes, sir.

Q. You were indicted and tried for whipping that man? A. Yes, sir.

Q. And you say that when you were on trial you were called up and made to put your hand on the Bible? A. Yes, sir.

Q. And you were sworn to tell the truth? A. Yes, sir.

Q. And you told it then to the jury and court that were trying you? A. Yes, sir.

Q. No mistake about that? A. Yes, sir, I told it there in court.

Q. And under oath? A. Yes, sir.

Q. Upon that they convicted you and sent you to the penitentiary? A. Yes, sir.

Q. Well, have you ever told it any other time?—have you ever been sworn in Raleigh about it before to-day—oh don't look over there, look here and tell us. Have you ever been sworn in Raleigh before to-day? A. I never swore in Raleigh that I know of.

Q. Did you ever tell this story since you have been in the penitentiary? A. Yes, sir, I have told some part of it since I have been in the penitentiary.

Q. Who did you tell? A. Mr. Thompson.

Q. Why did you tell Mr. Thompson? A. I told it to him directly after I got into the penitentiary.

Q. How did you happen to tell him? A. He called me up to the office and asked me something about it.

Q. That was after you had sworn to it in court at Alamance? A. Yes, sir, that was after I had been convicted and put in the penitentiary.

Q. Have you ever told anybody else besides Mr. Thompson since you have been in the penitentiary? A. Yes, sir, I have told some men about it to-day.

Q. Have you not told them before to-day? A. Not as I know of.

Q. Let us go back to that night. What night was it that you went on this expedition. A. I think it was on a Friday night.

Q. What time of the year? A. In June.

Q. What time in June? A. When we went out a whipping—that was about this time last year. I think it was. I did not understand your question.

Q. What sort of a night was it? A. There was snow on the ground.

Q. Was it a clear night or cloudy? A. The moon was shining. I think it was right clear.

Q. Can you tell what day in February it was? A. No, sir.

Q. You do not recollect the day? A. No, sir.

Q. But it was a Friday night you say? A. Yes, sir, it was a Friday night when I was taken up.

Q. I am not asking you when you were taken up. I ask you what night it was you started out to whip these persons. A. That was on Friday night.

Q. You were not taken up that night? A. No, sir, we were taken up on Saturday.

Q. You cannot tell whether it was in the middle of February or past the middle of February? A. No, sir, I cannot tell that for I don't know.

Q. But you recollect there was snow on the ground? A. Yes, sir.

Q. How deep was the snow? A. A little light snow.

Q. Where did they find you that night? A. At Jim Foust's.

Q. What were you doing there? A. I was helping them clear new ground.

Q. What time in the night did they come there? A. I don't know exactly what time in the night. It was a while after supper—right smart in the night after supper.

Q. Had you been to bed? A. No, sir.

Q. You had not been to bed? A. No, sir.

Q. Who was in the house when they came? A. Me and Jim and his wife.

Q. Jim who? A. Jim Foust.

Q. And his wife? A. Yes, sir.

Q. Did they come in all of them? A. Yes, sir.

Q. Who came in? A. Allen Paisley, Oscar Albright and Duke Hatmaker came in.

Q. Did they take seats—did they sit down there and talk? A. No, sir, they did not sit down; they just came in and stood up.

Q. What did they say when they came in? A. They came and went to talking to Jim a little bit. Then he said "Thomp-"son, I want you to go with me on a journey to-night?" I said "Where to?" He said, "I want you to go to Henderson "Cobles."

Q. Henderson Coble was a relation of yours? A. He was an uncle. I said "What for?" He said he was to whip him.

Q. You did not have any occasion to go and whip your uncle? A. No, sir; I didn't want to go. I told him I didn't want to go. He said I should. Then Jim and Duke drawed clubs on me.

Q. Jim who? A. Jim Foust and Duke Hatmaker.

Q. Drew clubs on you? A. Yes, sir.

Q. What sort of clubs? A. They had great big knots—some kind of little clubs grubbed out of the ground, and had roots on about as big as my first or a little bigger.

Q. They raised them? A. Yes, sir.

Q. And threatened to beat you? A. Yes, sir. They said they would kill me—and Paisley cocked his gun—if I didn't go. I thought rather than be killed it would be best for me to go.

Q. And help to whip your uncle? A. Yes, sir, and I——

Q. What preparation did you make for starting? A. Then Paisley put Jim and Duke there to guard me, and he goes down to the woods and got some caps.

Q. They guarded you right there at the house? A. Yes, sir.

Q. Were you in the house or out of the house? A. They kept me in the house.

Q. Did they take seats there in the house? A. No, sir, they stood at the door. The house didn't have but one door to it.

Q. How long was this man gone? A. He was gone right smart—I don't know exactly how long.

Q. An hour or two? A. I don't think—I think he was gone about a half hour, I reckon.

Q. That is your notion about it. He came back? A. Yes, sir, he came back.

Q. And came in the house? A. Yes, sir.

Q. What did he bring in? A. Four caps.

Q. What sort of looking things were they? A. They looked sort of white and sort of blue—that is the way they looked to me.

Q. Which did they have the most of, white or blue? A. I did not notice particularly about that. I cannot tell which was the most.

Q. Describe what sort of things these caps were and how they looked? A. They looked mighty bad.

Q. Tell us how they looked bad? What was there except being a cap? A. They had a little tassel on the top.

Q. What, horns—is that the way they were? A. No, sir, I cannot say they looked like horns, it was a tassel.

Q. How long? A. That long, [indicating about six inches].

Q. Did they stand up or did they fall down? A. They stood up.

Q. How many did they have? A. Four of them.

Q. And they looked mighty bad? A. Yes, sir.

Q. Did they scare you any? A. No, sir, I wasn't any scared about the cap.

Q. What did they do with these caps? A. Then he told Jim he didn't have a cap—they lacked one. He said, "Thompson has an old pair of saddle pockets, won't they do?" Paisley said "Yes," and told him to go and get it.

Q. Who went and got the saddle pockets? A. Jim Foust.

Q. How long was he gone? A. He was not gone more than two or three minutes.

Q. And he brought back the saddle pockets? A. Yes, sir he brought them to Allen Paisley and Paisley went and made a cap, and Jim and Duke guarded when he made it.

Q. What color was the saddle pockets? A. Red.

Q. What did they do with the saddle pocket cap? A. He put it on Albright.

Q. What was done with the other caps? A. They put the caps on all of us.

Q. Did you put one on? He put it on for me.

Q. You wouldn't put it on? A. No, sir, I didn't want it on but he made me.

Q. What else was put on? A. He made us pull out our shirts and put on over our clothes.

Q. Right before Foust's wife—she was there? A. She was there.

Q. And she saw it put on? A. Yes, sir.

Q. After you got your shirts on outside of your coat and your caps and they got on their white gowns—first tell us who had the white gowns? A. Paisley had a long gown of some kind that hung down to about here [indicating].

Jim had a blanket, and Duke had something like a petticoat.

Q. How did he wear it? A. He put it on over his head and it come down.

Q. How low did it come down? A. I think it come down to about here [indicating.]

Q. How did he keep it about his neck? A. He fastened it some how around there.

Q. When you got equipped what was then said? A. We went up in the old field.

Q. Whose orders were you under? Who was captain?—A. Paisley.

Q. He ordered you to march up to the old field? A. Yes, sir.

Q. How far was the old field from there? A. I reckon some two hundred yards from the house.

Q. When you got to the old field what was then done?—A. He said he was going to make laws.

Q. What laws did he make? A. He told us that we must never tell——

Q. The first law was that you were never to tell, no matter what happened? A. Yes, sir.

Q. Tell us the next law? A. He said——

Mr. GRAHAM. Will the counsel let the witness go on and complete his answers without interrupting him before he gets to the end of the sentence.

Mr. BOYDEN. I think I have a right to cross-examine the witness in this way.

Mr. GRAHAM. I think the witness is entitled to be examined fairly and without the frequent interruptions to throw him off his self-possession.

Mr. BOYDEN. I am willing that the witness shall state all the laws that were made.

Q. Go on. A. He said that if we ever told he would kill us.

Q. You have stated that before. What next? any thing

more? A. He said if he did not get us there was another company over in Graham that would do it.

Q. Did he tell you who they were? A. No, sir, he never told us who they were.

Q. After this conversation what then? A. Then he went down to Uncle Henderson's.

Q. How far was Henderson Coble's from there? A. I reckon it was a little over half a mile.

Q. You went there did you? A. Yes, sir.

Q. When you got there what took place? A. He knocked at the door and made him get up.

Q. Did you go in, any of you? A. No, sir.

Q. What was said when you knocked at the door? A. I forget now exactly what was said, but he knocked at the door and called him out.

Q. Who called him out? A. Paisley.

Q. What did he say he wanted? A. He said he was going to give him a whipping?

Q. He told him that before he came out? A. No, sir, after he came out.

Q. What did he say before he came out—why did he tell him he wanted him to come out? A. He told him to come out there after he knocked at the door.

Q. He did not tell him what he wanted? A. Not until after he had got out. Then he told him he was going to whip him.

Q. How long after he told him before he came out? A. He never told him what he was going to do until after he came out.

Q. You do not understand me. I ask you how long it was after he told him to come out before he did come out? A. It was not long. I don't reckon it was more than two minutes.

Q. Who opened the door? A. Uncle Henderson opened the door.

Q. You did not open the door at all? A. No, sir.

Q. As soon as he stepped out what was done? A. He commenced whipping him.

Q. Did they catch hold of him? A. I don't know whether they took hold of him or not.

Q. You don't recollect anybody taking hold of him, but you recollect they whipped him? A. Yes, sir, I did not see them take hold of him.

Q. Did they whip him very severely? A. Yes, sir, they made him beg and pray mightily.

Q. Did he take it without being held—didn't he offer to run away, or did he just stand and take it? A. He got down on his knees. He didn't try to get away.

Q. He just stood and took it? A. Yes, sir.

Q. Then he commenced to pray mightily? A. Yes, sir.

Q. How many licks do you think you gave him? A. I don't know, I can't say.

The CHIEF JUSTICE. You have no right to put the question in that way.

Q. I do not mean you—how many were given him? A. I don't know how many there were.

Q. You didn't whip him at all? A. No, sir.

Q. Nobody but one man? A. Nobody but Paisley.

Q. What after that? A. After they whipped him once they asked him if he didn't belong to the league.

Q. What did he say? A. I don't know whether he said he belonged to it or not. I never understood what he said.

Q. You didn't hear his answer? A. No, sir.

Q. Then did Paisley whip him again? A. Yes, sir, he whipped him again, and asked him about his going about and telling stories over the country.

Q. Did he tell what stories? A. He said he told some stories about him.

Q. He didn't tell what they were? A. Not as I heard of, he did not.

Q. After you had been whipping him what did they do? A. After he whipped him for going over the country and tel-

ling stories, he asked him if he had got any meat. He said yes he had got some middlings. He said, "Have you got any ham?" He said "No," then he said "You can keep that then."

Q. Did he know who was whipping him—did he say he knew you? A. He said at the trial he knew us.

Q. I mean that night? A. I never heard him say that he knew us that night.

Q. He did not profess to know any of you that night? A. He did not say he did.

Q. What next? A. They made him go to bed.

Q. Did you go in the house all of you? A. No sir, I didn't go in the house—there didn't any of us. They told him that he had to go to bed. I heard the bed rattling, and I allowed he had gone to bed.

Q. Then what? A. He goes on to Uncle Tom Woods'.

Q. Who goes? A. Paisley, and he takes us to Uncle Tom Woods'.

Q. How far is Tom Woods' from that place? A. I don't know exactly how far it was.

Q. State as near as you can. A. I reckon about a quarter of a mile.

Q. What time in the night do you think it was when you got to Tom Woods'? A. I don't know—I cannot tell what time it was. I think it was pretty late in the night.

Q. What do you mean by pretty late, eleven or twelve o'clock? A. I think it was getting about bedtime.

Q. You think it was about getting towards bedtime? A. Yes, sir, I think so.

Q. Early bedtime or late? A. Late—about eleven o'clock.

Q. How long did you stay at Tom Woods'? A. I don't know, we didn't stay very long.

Q. When you got there what was done? A. He went to the house and woke up Tom Woods and made him get up and come to the door.

Q. How did you make him get up? A. They just called.

Q. What did they do? A. They called him to come to the

door. He came to the door and stood at the door and looked at me.

Q. He came and opened the door and looked at you? A. Yes, sir.

Q. What then? A. Then he asked if he ever saw the "Ku Kluxes." He said "No." He said these was "Ku Kluxes."

Q. Who said that? A. Paisley.

Q. He said they were Ku Klux? A. Yes, sir. He said he never saw them before.

Q. He asked where his wife was? A. He said she was in bed. He told him to have her get up and see the Ku Kluxes.

Q. Did he go in? A. No, sir, he didn't go in the house.

Q. He did not go and tell his wife? A. He stood at the door and told her.

Q. To come out? A. Yes, sir, and when she came out the door he asked her did she ever see the Ku Kluxes before.

Q. What did she say? A. She said she had never seen them before.

Q. Then what? A. Then he said these was Ku Kluxes.

Q. Then he wanted to know of Tom Woods why he had not got that free school started? A. He said the folks concluded not to start the school till fall.

The CHIEF JUSTICE. It is hardly necessary to have him tell over the story. He is telling it the same way.

Mr. BOYDEN. I desire, Mr. Chief Justice, to see if he can tell it twice in the same way. I think we have a right to examine him in that way. It may be a made up story. It is in that view I am asking the questions.

Q. What did you do then and what did he say after that? A. He said that the folks that were starting the school rather wait until fall. He said to Uncle Tom, no he was the occasion of it.

Q. Of the school not starting? A. Yes, sir, he told Uncle Tom that he was the occasion of not starting the school. He was the school committee.

Q. He was the school committee? A. Yes, sir, Uncle Tom

was. He said Uncle Tom was the school committee and he had start the school in three weeks, if he did not he would give him a whipping. I do not know whether Uncle Tom said he would or not. Then he said he must have that meeting house there in two or three weeks. He told him he must have a white folks' school and a colored folks' school, and then we bid him good night and went down to Uncle Monroe Freeland's and knocked at the door of Uncle Monroe's.

Q. Did you whip him? A. Yes, sir, he whipped him.

Q. How much did he whip him? A. I don't know how much he whipped him.

Q. I mean the party, all these men? A. He wanted us to give him five licks apiece and we would not do it, and he whipped him himself.

Q. Did any body strike a lick? A. I saw nobody but him.

Q. Did they all refuse? A. All refused but Paisley.

Q. He was the man who did all the whipping? A. Yes, sir, he did the whipping.

Q. He requested them to give him five lashes apiece, and they would not do it? A. Yes, sir.

Q. You say that? A. No, sir, they would not whip him—none but Paisley.

Q. Did they give him a severe whipping? A. Yes, sir, I think they did.

Q. Was it on his bare back? A. No, sir, on the shirt.

Q. Did the blood run? A. No, sir, I did not see any blood. If it did run I did not know it.

Q. How many lashes do you suppose Paisley gave him?—a hundred? A. I don't reckon he gave him as much.

Q. Seventy-five, do you think? A. I don't know. I cannot tell exactly.

Q. State it as near as you can? A. He gave him a dozen licks, about that.

Q. That is all you think he gave him? A. I think all, but I cannot say for certain.

Q. What time was it you went there at this place? A. I don't know what time of the night it was.

Q. State as near as you can—give your best judgment?

A. As far as I can guess it was pretty late in the night—everybody was gone to bed.

Q. What hour of the night do you think, about? A. Twelve or one o'clock, I reckon.

Q. Where did you go then? A. We never went any where else. He whipped Uncle Monroe because he said he and Hinton Roberts had stole a bull. He said they were accused but they did not do it. Then he called his son down from the loft and he said he had been telling some stories about him and he turned in and whipped his son.

Q. How many lashes did Paisley give him? A. I don't know exactly how many.

Q. How old a boy was Mike? A. I reckon about nineteen years.

Q. What did they whip him for? A. He said that he had been telling stories on him, then he told him there was some young lady that he must marry or he would whip him again.

Q. That he must marry—they whipped him to make him marry? A. No, because he told stories on him.

Q. And they told him he must marry a certain girl? A. Yes, sir.

Q. What did you do then? A. We then went up back to Uncle Tom Woods' son-in-law's house.

Q. What time was it you got to Tom Woods' house? A. I don't know what time it was—I guess it was pretty late.

Q. Getting to be pretty near daylight? A. It was not that late.

Q. What o'clock do you think it was? A. I reckon it was after midnight.

Q. You think it was midnight then? A. It was after midnight.

Q. How long after? A. I don't know exactly how long it was.

Q. Did you quit after you went to Woods'? A. We got through and then went down to his son-in-law's.

Q. What is his name? A. John Woods.

Q. What time do you think it was when you got there? A. I don't know, I was not studying much about the time. I was uneasy being about among these folks.

Q. What did you do? A. He went into the house—Paisley went into Tom's son-in-law's house—inside, if I am not mistaken.

Q. Did any of the rest go in? A. I don't think any one went in but Paisley; I think he went in and he asked for Tom's son-in-law, and they said he was not there.

Q. What was his name? A. John Woods. She said he was over to Mr. Curtis'.

Q. Who did you ask for? A. For Tom's son-in-law.

Q. Is he a son of Tom Words? A. A son-in-law.

Q. Was he not the son of Tom Woods? A. The son-in-law; he said he was not there; he left a hickory and told her that it was to whip him with.

Q. Where did you go then? A. We went to the old field, not far from Jim Foust's, and took off the clothes.

Q. That ended the business? A. He took off his clothes and told Jim to go to his house, and that if anybody was there he must give a whistle.

Q. He came back in the field? A. He whistled—that is he said he whistled, but I never heard him whistle.

Q. You did not hear him whistle? A. No, sir.

Q. Then what was done? A. Then we went to the house.

Q. Whose house? A. Jim's house.

Q. Did you all go in? A. No, sir.

Q. Who didn't go in? A. Paisley.

Q. Who did? A. Me and Jim went in.

Q. Who did you find in there? A. The rest of them went off home.

Q. Who did you find there when you went in? A. Nobody but his wife.

Q. Nobody else? A. No, sir.

Q. Jim had not gone in at all? A. Jim went in, but Paisley, Albright and Duke went off, I reckon they went off home.

Q. What time was it when you broke up? A. I don't know what time it was.

Q. Have you ever been threatened by anybody if you didn't swear to this story that you have told? A. No, sir, nobody but Paisley.

Q. But he did not threaten you to make you tell the story? A. No, sir, he said not to tell it.

Q. He didn't want you to tell it? A. No, sir.

Q. Has anybody threatened you what they would do if you did not tell it? A. No, sir, nobody has threatened me if I didn't tell as I know of.

Re-Direct Examination.

By Mr. Graham.

Q. Did you have any idea of being examined before last night or this morning? A. No, sir.

Q. Nobody ever told you you would be called upon? A. No, sir, the commissary told me he was going to bring me to town.

Q. And you told nothing about this to anybody until you came to see some gentlemen in the room at the capitol. A. Yes, sir.

Q. At the time Woods, you say, was the committeeman of that township or district? A. Yes, sir, he was the school committee.

Q. Was there any other officer whipped that night? A. Not as I know of.

Q. He was the only man having a commission who was whipped that night? A. They never whipped Tom Woods.

Re-Cross-Examination.

Q. Do you know of any Ku Klux going about in the county—did you ever see any body going about in disguise? A. No, sir.

Q. You never saw any body going about with this disguise only the night you went out? A. No, sir, I never saw any.

Q. Do you know of any body having been whipped except those you whipped that night—did you see any body that had been whipped? A. No, sir, I have not seen any body who had been whipped.

Re-Direct Examination.

By Mr. GRAHAM.

Q. You say that Tom Woods was a school commissioner and was not whipped, but was threatened by Paisley unless he started the school within three weeks, he would be whipped? A. Yes, sir.

Q. Paisley expected to be the teacher of the school? A. Yes, sir.

Q. When you were taken up and tried before these two justices, Neese and Seymour Holt, they asked you whether you were guilty or not? A. Yes, sir.

Q. You were not sworn were you—they did not make you put your hand on the Bible? A. No, not as I recollect of—if they did I forget about it.

Q. [By the Chief Justice.] You don't know whether you put your hand on the book that time or not? A. No, sir, I don't know as I did now. If I did I have forgotten it.

Mr. GRAHAM. The witness on the cross-examination was hurried on by the questions so that he may very well have been confused.

Q. When you were brought before the court, who was the judge? A. Mr. Tourgee.

Q. Do you know how Mr. Tourgee voted? A. I do not.

Q. It was before him that you went and you did every thing under the direction of Mr. McAdam who was your lawyer? A. Yes, sir.

Q. You did what he requested you to do? A. Yes, sir.

Q. When you made your statement to the court was not this the way?——

The CHIEF JUSTICE. The counsel has no right to lead the witness.

Mr. GRAHAM. I don't desire to do it, but the witness is a simple-minded boy and it is difficult.

Q. Did you do any thing except what Mr. McAdam told you to do?

Mr. BOYDEN. We object to the question as leading.

A. They made us go on to tell and swore us to tell the truth.

By the CHIEF JUSTICE.

Q. Swore you to tell the whole truth. A. Yes, sir.

Q. Did you there tell what you told here to day? A. Yes, sir.

By Mr. GRAHAM [resuming.]

Q. Were you and Paisley and Albright all carried into court before that day? A. Yes, sir.

Q. That is the only place where you made any public statement about it? A. Yes, sir.

Q. It was done in court? A. Yes, sir.

Q. Who called upon you to make any statement about it—did Mr. McAdam put you forward? A. Yes, sir.

Mr. BOYDEN. I object to the question as leading

Mr. GRAHAM, I really do not know how to examine a simple man like he is without putting the questions in that form.

The CHIEF JUSTICE. I know it is very difficult but the rule requires that you shall not ask your own witness a leading question.

Q. Were you called upon to make a statement? A. Yes, sir.

Q. Do you know whether you were sworn about it or not, or whether you were allowed to make a statement without putting your hand on the book and swearing. [To the court.] There are gentlemen here who know he was not sworn.

Mr. BOYDEN. You need not tell him that.

Q. You say you made a statement in the presence of the judge? A. Yes, sir.

Q. And the judge sent you and Paisley and Albright to the penitentiary? A. Yes, sir.

Senator JOHN A. GILMER, *a witness called on behalf of the Managers, being duly sworn, testified as follows:*

By MR. MERRIMON.

Q. Have you heard the witness Thompson who was last examined. A. Yes, sir.

Q. State whether or not you were present at the session of the superior court in Alamance county when his case was tried on an indictment on account of the transaction he has detailed this morning? A. I think I was present during the trial.

Q. State what transpired, and whether he made the statements then substantially as he has made them here? A. My recollection is that there was a submission by the three defendants of whom this witness was one, and that it was entered of record. Mr. McAdam was assigned to defend them, and I think that he stated to the court that this witness was probably a subject for a lighter punishment, because, as he alleged, he had been led into a breach of the law, and he requested the court to let him make a statement, which request was granted.

Q. [By Mr. Graham.] The witness? A. Yes, sir, I think it was the same man. This witness was allowed to get up and make a statement, which as near as I can remember was substantially what he has stated here to-day.

Cross-Examination.

By MR. BOYDEN.

Q. Do you think you recollect his statement, every bit of it? A. I do not know that I can answer as to that. It was a very long statement like the one he made here to-day.

Q. State as far as you can where it corresponded? A. As far as I can recollect it was substantially the same. The points of his statement were that this man Paisley and another, whose name I do now remember, went out on this expedition against three of their colored neighbors. That was the only part in the testimony that impressed me.

Q. I ask you now did you know of any secret organization under either of the names which have been mentioned in the course of the trial, or any other names?

Mr. GRAHAM. You mean in the county of Alamance?

Mr. BOYDEN. Anywhere.

Mr. GRAHAM. I object to the question beyond the county of Alamance. They are the people who have been denounced and imprisoned as in insurrection against the law, and the inquiry is whether they were connected with anything of the sort.

Mr. BOYDEN. The point is, as we allege, that these secret organizations extended throughout the state, that their object was to subvert the government of the state, as far as the amendment to the constitution since the war is concerned, except the emancipation of the slaves, and to subvert that portion of the constitution of the United States giving political rights, except the abolition of slavery; that it was a large and extensive organization extending throughout the state, and all connected and engaged in the same object. I desire to ask this gentleman if he has any knowledge of any such organization any where in North Carolina.

Mr. GRAHAM. That is the question, Mr. Chief Justice, which we object to. It might be asked of him whether he knew of the existence of such an organization in the county of Cherokee or Currituck, or any where. Even in cases of treason it is necessary to prove an overt act within the district where the party charged is tried; and until that overt act is shown in that district, nothing can be shown which transpired outside of it.

Mr. BOYDEN. I consider the suggestion of the learned counsel wholly irrelevant. There is nobody here on trial for treason. That is a question simply of jurisdiction. To enable the court to hold jurisdiction, the act must be done in the state where the cause is tried. But we insist that this organization existed not merely in Alamance and Caswell, but that it was a state organization existing through twenty or thirty counties, and that it had got to be so bad in these two counties as to compel the governor to issue a proclamation declaring them to be in a state of insurrection. We say they are all connected, that it is but one society, and if we can prove

there is an organization in Guilford county we expect to prove it is connected with the organization in Alamance and Caswell, and if so, any act done in furtherance of the design of this organization in Alamance is the act of this general organization.

Mr. MERRIMON. This is the case, Mr. Chief Justice: The respondent alleges that there was an organization in the counties of Alamance and Caswell. The Managers deny the fact. Now, before they have shown any act of insurrection, they undertake to show an insurrectionary body in Cherokee. Suppose there were an insurrectionary body in Guilford, does that prove an insurrection in Caswell and Alamance? We say that the proof sought to be elicited has no relevancy whatever.

Mr. BOYDEN. Mr. Chief Justice, it is very clear that it comes under the rule decided by this court. Can there be anything clearer than that if this organization committed these acts of violence in Cherokee and Currituck, and was a part of a general organization, which we say existed also in Alamance or Caswell, it was not just as much an insurrection as if committed in Alamance or Caswell? Can any one deny it.

Mr. MERRIMON. I do.

The CHIEF JUSTICE: The persiding officer is of the opinion that the evidence is competent, not as a fact in the case, but as a circumstance tending to show the existence of an organization in the county of Alamance; strictly, the evidence is not now in order, but when counsel say they expect to connect it with other proof, it is usual to allow them to take their own course, depending upon their word that they will produce the necessary proof to make it admissible.

Mr. MERRIMON. Mr. Chief Justice, the Managers would like to have a vote of the senate on the point raised.

The WITNESS. Have no hesitation in answering the question, or anything that may be desired to be put.

Mr. MERRIMON. We desire to have the question settled now.

A sufficient number seconding the call for a division by the Senate,

The CLERK proceeded to call the roll of Senators on the admissibility of the question, and it was decided in the negative.

Those who voted in the affirmative are:

Messrs. Beasley, Bellamy, Brogden, Cowles, Eppes, Flythe, Hawkins, Hyman, King, Lehman, McCotter, Moore and Robbins, of Rowan—13.

Those who voted in negative are:

Messrs. Adams, Allen, Battle, Brown, Cook, Council, Crowell, Dargan, Flemming, Gilmer, Graham, of Alamance, Graham, of Orange, Jones, Latham, Ledbetter, Linney, Love, Mauney, Merrimon, Morehead, Murphy, Robbins, of Davidson, Skinner, Speed, Troy, Waddell, Warren, Whiteside and Worth—30.

Senator JOHN W. GRAHAM, *a witness called on behalf of the Managers, being duly sworn, testified as follows:*

By Mr. MERRIMON.

Q. State to the court whether on the trial referred to in the question put to Senator Gilmer you were present in the superior court of Alamance county? A. I was. These persons submitted to a verdict of guilty, and it was entered. Then Mr. McAdam desired that this man who has been examined here to-day should be allowed to make a statement of his connection with the affair. I do not recollect that the witness was sworn, but my impression is that Judge Tourgee told him to tell the truth and the whole truth, and all the facts before he commenced. He made substantially the same statement he has made here to-day. I don't recollect that anything was asked of whether he was brought before the magistrate or not, but I don't think anything of that kind was stated at that time. I suppose what Mr. McAdam said would not be competent to be received here.

Mr. MERRIMON. You may state it unless there is objection.

A. He said that he did this with a view of mitigating the punishment of this man, for he thought he had been led into the matter by others, and that his sentence would be lighter if he were allowed to make this statement.

Cross-Examination.

By Mr. BOYDEN.

Q. I wish to ask you a question, if you know of any secret political organizations in the county of Alamance? A. I do not, nor any where else, except from hearsay.

Q. Have you ever seen any persons riding about in these disguises? A. I never have.

Q. Have you ever seen anybody with them on? A. No, sir.

DANIEL WORTH, *a witness called on behalf of the Managers, being duly sworn, testified as follows:*

By Mr. GRAHAM.

Q. Where is your place of residence? A. Company Shops.

Q. What is your business occupation? A. I have been a merchant for several years until the first of this last January.

Q. State what were the relations between the black and white people in the county, at any time within the last two years, whether they are friendly or not? A. They are good so far as I know.

Q. And ordinary business was transacted between them, as employer and employed? A. Yes, sir.

Q. Has any colored man been refused employment, so far as you know, by reason of the way he voted? A. There was not.

Q. They are generally employed as laborers by the farmers, or in mechanical employments, where they are skilled in that way? A. They were.

Q. Do you know of any attempt being made to control their votes? A. I do not.

Q. Do you know of any resistance to the laws in the county of Alamance, or any resistance to an officer of justice in the execution of his duties? A. I do not.

Q. Is your place in the town of Graham? A. Yes, sir.

Q. Is there a magistrate at the Shops? A. Yes, sir.

Q. How is he as to party divisions? A. I cannot say, but it is understood he is a republican.

Mr. BOYDEN. The witness certainly is not competent to speak.

Q. Have you ever known a state's warrant refused to be issued by a magistrate in your town? A. I have not.

Q. Did you ever know a constable to refuse to execute a process on a person charged with any offence in your town? A. I have not.

Q. Did you ever know of any resistance to the revenue laws? A. I have not.

Q. The answer of this respondent on page 7 says that school houses were burnt in the county of Alamance. Do you know of any school house having been burnt? A. I do.

Q. Who did it belong to? A. It belonged to me.

Q. It stood at Company Shops? A. Yes, sir.

Q. You built it at your own expenses? A. Yes, sir.

Q. With what political party do you vote? A. I vote with the conservative party.

Q. Do you know of any political motive which would lead to the destruction of your house? A. I do not.

Q. Was it a school for white children? A. It was for white children.

Q. Burnt down in the secret hours of the night? A. Yes, sir.

Q. You were living at Company Shops at the time Kirk's expedition invaded the place? A. My family was there, I was not there myself.

Q. Where were you? A. I was in Lenoir county.

Q. Carrying on a farm down there? A. Yes, sir.

Q. Did you visit your family at the time? A. I went home a few days before they returned with the prisoners from Caswell.

Q. Did they stay any time at the Shops before they went down to Graham? A. I think they stayed there only one day.

Q. Did you observe what sort of discipline was kept up?

A. I cannot speak much of that. I was there but two or tl times.

Q. You saw the prisoners that they had in charge—. mance and Caswell citizens? A. Yes, sir.

Q. What number do you suppose there were? A. I do know.

Q. A considerable number of prisoners were in their ha at that time? A. Yes, sir.

Q. Did you see much of the doings of Burgen and K while in command there? A. Very little.

Q. Do you know anything of the existence of a Union Lea in the county of Alamance? A. No, sir.

Q. You did not see them have any public parade, or h any public entertainment at any time? A. I think not.

Cross-Examination.

By Mr. Boyden.

Q. Did you know a man living at the Company Shops by name of Corliss? A. I did.

Q. What was he engaged in? A. He was teaching a colo school.

Q. Were you there at the time he was chastised? A. I w

Q. Tell us all that you know about that without my aski you particular questions? A. Between 12 and 1 o'clock t cook came to my door and said there was somebody halloo at the gate.

Mr. GRAHAM. It is not proper to speak from hearsay.

Q. What time was this? A. It was in the night betw 12 and 1 o'clock. She said they were hallooing like a child. walked out and made some noise to attract attention, it th was anybody there. I went back for a few minutes, and w to bed again, and then I heard the dogs barking, and I beca uneasy—fearful that there was a child lost, and I got up a put on my clothes and walked up and down the road fi and it may be a hundred yards. When I was coming ba towards my gate I heard a noise across the railroad and I n Corliss' wife.

Mr. GRAHAM. Do not speak of your conversation with r.

Q. What condition was she in with respect to dress? A. e had a shawl on, or something of that kind, and her shoes.

Q. Was she in her night dress? A. I think so.

Q. Go on? A. After some talk I went back into the house. he next morning——

Q. Did you hear any more noise that night? A. I did not.

Q. The next morning, what took place. A. I went over to he house of Corliss and found him lying on the bed. I saw ome bruises about his head and perhaps some on his arm.

Q. What was the condition of this man—is he a cripple? ı. He was a cripple.

Q. Where did he come from. Was he a northern man not? A. I think he was.

Q. He was teaching a school there? A. Yes, sir.

Q. How long had he been there? A. I think he had been ıere for four months.

Q. He had been teaching a colored school there? A. Yes, sir.

Q. Was he a well behaved man as far as you knew? A. As r as I know he was.

Q. I ask you now if it is not within your knowledge that ere was a very bitter feeling against this man Corliss, because e was there teaching a colored school? A. I cannot say that ıere was.

Q. You do not know of any such feeling? A. There was ome feeling against him, but I cannot say that it was altogether ı account of his teaching the school.

Q. There was an unkind feeling towards him? A. There as some feeling.

.Q You say it was not altogether on account of his teaching hool? A. I do not think it was attributable to that.

Q. Do you think it was partially? A. It may have been, though I can say that other men might have come and taught colored school without——

Q. That is not the question, what other men could have

done. What was the other thing besides the school that caused ill feeling against him? A. His general——

Q. Was it not because they thought he was trying to get up a colored church? A. I never heard of that.

Q. Did you understand it was because he told the colored people they had a right to go into the church where the white people were—was that one of the reasons? A. I have heard that spoken of. I have made some inquiry about it, but I never heard anybody say they heard him advise that way.

Q. You saw him that morning? A. Yes, sir.

Q. Was he in bed or up? A. He was in bed.

Q. Tell us his condition—what he said?

Mr. GRAHAM. I object to what he said about that.

Mr. BOYDEN. Mr. Chief Justice, I understand the doctrine is very well settled in North Carolina that where a man is in bed suffering from illness what he says about it is to be regarded as evidence. The witness says he saw bruises on two different portions of his body, and it was the morning after he had received this terrible scourging, and his statements under these circumstances are admissible in evidence.

Mr. BRAGG. We understand, Mr. Chief Justice, that it is proposed now by the counsel for the respondent to give in evidence the declarations of Corliss not only as to his sufferings, and the condition he was in, but as to how he came to be in that condition.

Mr. BOYDEN. I have not offered that. What I offered to prove was what he said about his condition. I will put the question so that it will be perfectly understood.

Mr. SMITH. This is the question which we propose to ask the witness. "What did Corliss say as to his condition." There have been four or five decisions in this state in which it has been held that the declaration of a party as to his physical condition is always competent evidence as to the fact.

Mr. GRAHAM. Of course it is competent to tell how he felt when he had the bruises, and the fact whether they gave him pain or not. We do not object to that at all, but to under-

Mr. GRAHAM. Do not speak of your conversation with her.

Q. What condition was she in with respect to dress? A. She had a shawl on, or something of that kind, and her shoes.

Q. Was she in her night dress? A. I think so.

Q. Go on? A. After some talk I went back into the house. The next morning——

Q. Did you hear any more noise that night? A. I did not.

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Q. What was the condition of this man—is he a cripple? A. He was a cripple.

Q. Where did he come from. Was he a northern man or not? A. I think he was.

Q. He was teaching a school there? A. Yes, sir.

Q. How long had he been there? A. I think he had been there for four months.

Q. He had been teaching a colored school there? A. Yes, sir.

Q. Was he a well behaved man as far as you knew? A. As far as I know he was.

Q. I ask you now if it is not within your knowledge that there was a very bitter feeling against this man Corliss, because he was there teaching a colored school? A. I cannot say that there was.

Q. You do not know of any such feeling? A. There was some feeling against him, but I cannot say that it was altogether on account of his teaching the school.

Q. There was an unkind feeling towards him? A. There was some feeling.

Q. You say it was not altogether on account of his teaching school? A. I do not think it was attributable to that.

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Mr. GRAHAM. Of course it is competent to tell how he felt when he had the bruises, and the fact whether they gave him pain or not. We do not object to that at all, but to under-

take to admit his statement as to how he came to be in that condition, is altogether inadmissible.

The CHIEF JUSTICE. They have not raised that question.

Q. What did he say as to his condition? A. He complained of the bruises. There was a cut on his forehead, and I think he was bruised on his arm.

Q. Was he apparently suffering from his wounds? A. I suppose he was.

Q. And they appeared to have been recent? A. Yes, sir.

Q. I ask you whether Corliss had ever kept a colored school at night in this school house that was burned? A. I don't know that he was ever in the school house.

Q. Was there a school kept there at night? A. Not in this house that was burnt.

Q. Where did he keep the colored school. A. He kept it at a house that was used for that purpose.

Q. [By Mr. GRAHAM.] Is that colored school house standing there now? A. Yes, sir.

Q. Was there a colored school kept in that house by a man of the name of Meader? A. There was not.

Q. You have said I believe that Corliss had been engaged in teaching a colored school? A. Yes, sir.

Q. After this difficulty what became of him? A. He left there some time after that.

Q. How soon did he leave? A. I don't recollect, but I suppose two or three weeks—it may have been longer, or it may have been shorter.

Q. Do you know how long he was confined by these wounds which he had received? A. I do not.

Q. What became of Meader? A. He went home.

Q. How soon did he go after this difficulty? A. I think he went in December afterwards.

Q. In what month did this occur? A. It was a year afwards. I think this was in the fall. I am not able to give

you the date, but it was some 8, 10 or 12 months after that, that Meader went home.

Q. He was a northern man? A. Yes, sir.

Q. Was he the postmaster at Company Shops? A. No, sir.

Q. Who was the postmaster at Company Shops? A. George Boone.

Q. Was he a northern man? A. No, sir.

Q. Was there not a northern man postmaster there at one time? A. Never that I knew. There never has been.

Q. Meader was a northern man? A. Yes, sir.

Q. They have never returned, either of them? A. No, sir.

Q. Was there an unkind feeling towards him there that you know of? A. Not that I know of.

Q. Have you not heard men speak against him? A. Not that I know of.

Q. You heard no unkind feeling towards him? A. No, I did not.

Q, What was his business? A. Teaching school.

Q. A colored school? A. No, sir.

Q. A white school? A. Yes, sir.

Q. Where were you at the time Outlaw was hung? A. I was home.

Q. It was Sunday morning that he was hung. When did you hear of it? A. I heard of it that morning about 9 o'clock.

Q. Did you see his body? A. Yes, sir.

Q. You went over to it? A. Yes, sir, I was passing through Graham.

Q. Where did you see his body? A. Hanging on a tree.

Q. How near the court house? A. I suppose about forty yards, perhaps.

Q. He was hanging on a tree? A. Yes, sir.

Q. Did you examine his appearance? A. I did not.

Q. He was hanging by the neck? A. Yes, sir.

Q. Was he dead? A. I suppose he was.

Q. You are certain of that? A. I didn't go and examine him, but I supposed he was dead.

Q. He was hanging by the neck—there was no motion? A. I didn't see any.

Q. Have you any doubt but that he was dead? A. I have not.

Q. Do you know about this man Puryear? A. I do not.

Q. You never saw his body? A. I did not.

Q. Do you know any person in that section of the country who was whipped or maltreated besides this man Corliss? A. I do not.

Q. Did you see anybody that had been whipped? A. I did not.

Q. Do you know of any secret organization in the county of Alamance under any of the names that I have mentioned, Kuklux Klan or any other name? A. I never did

Q. Have you any knowledge as to how the school house happened to be burnt, and what it was burnt for? A. I have some reasons for believing.

Q. You can state what they are. A. I think it grew out of a personal matter between myself and a man that lives there in the place.

Q. Who? A. A man by the name of Gray.

Q. What reason have you for believing that? A. I came to that conclusion from a little difficulty that occurred between him and me just a short time before it was burnt.

Q. That is a mere surmise—you have no accurate knowledge about it in any way? A. No, sir; I did not see him set fire to it.

Q. It is a surmise? A. Yes, sir.

Q. You know of no facts touching the burning showing that he did it? A. No, I do not.

Q. Do you know of any threats being made against either of these northern men before they went there? A. I do not.

Re-Direct Examination.

By Mr. Graham.

Q. This man Gray was a gambler, and he kept a grog shop?

A. I believe that is his character. He was keeping a grog shop.

Q. He wanted to keep a grog shop at your door, or near you? A. Across the railroad a short distance.

Q. You refused to let him have the house? A. No, sir, it was a building which belonged to a man of the name of Sellers.

Q. You objected to permitting him, or anybody else to keep a grog shop so near you as that? A. If I can tell the conversation between him and me I will state the facts.

Mr. BOYDEN. We do not care anything about it, although we have no objection.

Q. I think you had better tell? A. He came into the store one day and he told me he wanted to see me. I took him into my counting room, and he told me that he understood I had threatened to tear down the house he was occupying.

Q. Was it your building? A. No, sir. I told him that I had never made any such threat, but said I, "I can tell you "what I have said, that you nor no other man can keep such a "house as you are keeping in my yard." He went on to say that he had tried to make his living by his trade, but he hadn't succeeded, and that he had gone there to sell whiskey to make a living and support his family. He seemed to be out of temper a good deal. I didn't think any more of it until that night when I was awakened up by seeing the house on fire, and my impression was that he was the man who did it.

Q. It was a short time after this conversation in which he showed considerable feeling against you about his keeping a grog shop? A. Yes, sir.

Q. How long before the fire do you think that was? A. It may have been two weeks, or it may have been a little longer.

Q. You were asked about a postmaster of the name of Boon. He was never whipped, was he? A. Never that I know of.

Q. This man Meader had a colored school for some twelve months after Corliss left? A. Not a colored school—a white school.

Q. He left twelve months after? A. I don't recollect, but

it was some time after that. He didn't leave, however, on account of fear or anything like that.

Q. In regard to this man Corliss, was there any prejudice against him because he had taken a colored woman into a church at Haw Fields, and seated her among the white people who took offence at it? A. I think that occurred at Haw Fields.

Q. Corliss got out a state's warrant against certain parties, and there was a trial before a justice on a charge of whipping? A. I understood he did.

Q. Mr. Faucett was the justice of the peace? A. Yes, sir.

Q. Were you present at the trial? A. I was not.

Q. But you know that such a trial took place, and that the men were proved innocent and discharged?

Mr. BOYDEN. He says he was not there.

Q. You have been asked as to the cause of the prejudiced against Corliss: I ask whether it amounted to this, that he was a man who tried to produce bad feeling between the white and the black people? A. Have heard that charged against him.

Mr. BOYDEN. I object to leading questions.

Q. What were the causes of prejudice against him particularly? A. The course that he pursued outside of the school, mingling with citizens there.

Q. What was there objectionable on that score?

By the CHIEF JUSTICE:

Q. Did he keep company with the citizens too much? A. Yes, sir.

Q. Did they object to him because of his keeping company with the negroes? A. I do not know that that was the objection.

By Mr. GRAHAM. [Resuming.]

Q. Carliss remained about three weeks after this violence, you think? A. I think he was there from two to four weeks.

Q. He was an obnoxious man in the community from the causes you have stated? A. He was to some extent.

Q. Is there a colored school there now?

Mr. BOYDEN. I do not know how that has any connection with this trial.

A. I do not know whether there is or not.

Q. Who built the school house in which the colored school was kept? A. It was built by the citizens of the place.

Q. The white people? A. Yes, sir.

Q. By subscription? A. By subscription.

Q. The school house for the colored children which is still standing, has never been burnt? A. No, sir.

Q. It was built by the white people of the town of Company Shops by subscription! A. Yes, sir.

Q. Was it built for a colored school? A. It was not.

Q. It was built for a white school? A. Yes, sir, for white children.

Q. But it passed into the hands of these others by purchase by the bureau, or by permission of the inhabitants. The inhabitants sold it to the government? A. The inhabitants sold it to the government for the colored people.

Q. That building has never been injured in any way that you know of? A. It never has.

Q. It has been suggested to ask you as to what political party the justice of the peace is. I understood you to answer that he was a republican? A. Yes, sir.

Q. Who is the constable in that neighborhood? A. Wylie Wood, I think.

Mr. SMITH. We submit, Mr. Chief Justice, whether it is competent to ask as to the political opinions of the constables and judicial officers of the county.

Mr. GRAHAM. I was not disposed to go into this inquiry at all, but the gentlemen on the other side have asked questions in reference to the political sentiments of individuals.

Mr. SMITH. We have asked the political opinions of the witnesses, not of other parties.

Mr. GRAHAM. The answer charges that there was a state of insurrection in Alamance county, and it is also charged, I think, that there was corruption in the magistracy of the

county, and that the magistrates did not perform their duties. If it can be shown that, in the locality where one of the outrages was committed, the magistrate was a person who would not be disposed to sympathize with any such outrages by reason of his political convictions, I contend that the proof is competent. I am perfectly willing to abandon the whole inquiry on that subject, if that is to be the rule. I should not have introduced it if it had not been started on the other side.

The CHIEF JUSTICE. The presiding officer is of opinion that the evidence is competent.

Mr. MERRIMON. I am informed that Senator Gilmer desires to make a further statement, and I ask that he have liberty to do so.

JOHN A. GILMER, *a witness on the part of the Managers being recalled at his own instance, testified as follows:*

The WITNESS: Being a senator, and one of the triers of this cause, I thought that it might be inferred that I hesitated in answering the question of the counsel for the respondent. I desire to state that I have no knowledge of any secret society, except what I have derived from the newspapers, and other hearsay.

By Mr. BOYDEN.

Q. Do you believe that information is true?

Mr. GRAHAM. I object to that.

Mr. BOYDEN. I think I am entitled to an answer to that question.

The CHIEF JUSTICE. I do not think it is competent to call for the belief of the witness.

SAMUEL J. CRAWFORD, *a witness called on behalf of the Managers, being duly sworn, testified as follows:*

By Mr. GRAHAM.

Q. Where is your home? A. Alamance county.

Q. What township? A. Pleasant Grove township.

Q. That is in the neighborhood of Lee's and McCauley's store? A. Lee's store—Vincent.

Q. What is your age? A. Forty.

Q. What do you follow? A. I am a mechanic.

Q. Are you well adquainted in that township? A. Yes, sir. I have lived there for a number of years, almost all my life.

Q. Are you pretty generally acquainted in the county of Alamance? A. In the northern part of the county I am very well acquainted.

Q. State to the court what, in the last two years, has been the state of feeling between the black and white people in your part of the country, whether it is friendly or otherwise? A. It has been friendly as far as I know.

Q. The business of society has gone on between employer and employee? A. Yes, sir.

Q. They got employment where they wished and persons desired them for help? A. Yes, sir, where they desired it.

Q. Do you know of any instance in which a colored man has been refused employment by reason of the ticket he voted? A. I have not.

Q. Upon what terms are they in the habit of working? A Different terms. Some are hired for wages, some are renters and some croppers.

Q. Getting a share of the crops? A. Yes, sir.

Q. Has that part of the country during the period I have been speaking of been peaceable and orderly as a general thing? A. Generally so. There has been very little disturbance for the last two years.

Q. Have you ever known any resistance to the law in that part of the country? A. None whatever.

Q. Taxes have been collected, both federal and state? A. Yes, sir.

Q. Officers having processes against anybody served them without resistence? A. Yes, sir, so far as I know.

Q. Do you know of any instance in which there has been

any attempt to influence the votes of colored men by force? A. No, sir.

Q. Were there persons as a general thing as safe as those of white people from unlawful violence? A. I think so. I know of no reason why they are not.

Q. Were you arrested yourself? A. I never was.

Q. Did you see Kirk's men have citizens in custody? A. No, sir, I never saw them have any of the citizens.

Cross-Examination.

By Mr. Boyden.

Q. I think you were called captain Crawford. When were you called forward? A. They call me by that name. I was never a captain. I was a lieutenant.

Q. You were in the military during the war? A. Yes, sir.

Q. In the confederate service? A. Yes, sir.

Q. What position? A. I was a lieutenant.

Q. Were you in active service or in the home guard? A. In active service.

Q. You were asked if you knew of any colored men of good character being forced to vote in a particular way? A. No, sir. Have never known a man forced against his wish.

Q. Do you know of any colored man being threatened with dismissal from his employment unless he voted as his employer wished him to?

Mr. GRAHAM. I object to the question unless the witness speaks of his personal knowledge.

Mr. BOYDEN. I am asking him if he heard of any. A. No, sir, I never knew any one to be dismissed.

Q. Did you ever know of any one being threatened on that account? A. No, sir, I have not. I do not recollect any one.

Q. Do you know of any promises made to them if they would vote in a particular way? A. No sir.

Q. You seemed just now to hesitate when you were asked the question whether a colored man was just as safe from injury as a white man? A. I only hesitated in order that I might think on the subject a little.

Q. Do you know of any colored men in your section who have been whipped? A. I have heard of some.

Q. I ask you if you know of any? A. I do not know of any of my own knowledge.

Q. Did you see their persons where they had been whipped? A. No, sir, I never did.

Q. Do you know of any thing about the death of Outlaw? A. Nothing only what I have heard.

Q. You didn't see him? A. No, sir.

Q. Do you know anything of the death of Puryear. A. No, sir.

Q. You did not see him? A. No, sir, not that I know of.

Q. Do you know of any secret political organization such as we have been speaking of here. I do not care by what name they are called? A. None whatever—political I mean.

Q. I do not allude to the Masons. You live in what place? A. In Pleasant Grove, Alamance county.

Q. I wish to ask you if a good many colored people in Alamance county within the last year have left to your knowledge? A. There have some left. I have heard of a good many leaving.

Q. Do you know the reason of their leaving? A. No, sir, I do not.

Q. You know no particular reason? A. Not of my own knowledge.

Q. I understand you that the colored people are just as kindly treated, and just as safe as white people in that county? A. I know of no reason why they are not safe.

Q. That is your opinion? A. That is my opinion. I think they are as safe when they conduct themselves properly, and they have the protection of the law.

Q. But suppose they do not conduct themselves properyly, do you think they are as safe from violence as white men. A. I think so.

Q. You say you have known of numbers yourself who have left? A. Yes, sir, I know some.

Q. Do you know what made them leave? A. Not of my own knowledge.

Q. Did they tell you? A. No, sir, they never told me why they left.

Mr. GRAHAM. We shall object to any hearsay.

Q. Did you see any men riding in disguise, or walking in disguise in the county of Alamance? A. I never did.

Q. You live near the Orange line? A. Yes, sir.

Q. Did you ever see Ku Klux disguises? A. I never did.

Q. What party do you belong to? A. I belong to the conservative party.

Re-Direct Examination.

By Mr. Graham.

Q. Your army acquaintance enabled you to become very well acquainted with the young men of your district and township? A. Yes, sir.

Mr. BOYDEN. We object to that.

Senator ROBBINS, of Rowan. I give notice, Mr. Chief Justice, that I shall make a motion for a recess at the close of the case for the Managers to give sufficient time for the report to be printed and distributed among counsel for the respondent so that they may have an opportunity to prepare for their defence.

ALEXANDER C. McALLISTER, *a witness called on behalf of the Managers, being duly sworn, testified as follows:*

By Mr. Merrimon.

Q. State your name, residence and business? A. Alexander C. McAllister. I reside in Alamance county, Company Shops.

Q. How long have you resided there? A. Since 1865.

Q. State whether you saw any armed men in the county of Alamance during the months of July and August, and if so, what their character, appearance and demeanor were? A. I saw a body of men arrive at Company Shops in the month of July, I suppose about two hundred in number. I cannot estimate them accurately.

Q. How did they come, and what did they do—what was their discipline? A. They arrived on the cars. They were very badly clad. I only saw them as they got off the train and marched off to camp.

Q. Which way did they come from. A. From the west.

Q. State anything further that you know about them? A. They were uniformed in a few days. They had a military camp a few yards from where my business was.

Q. State their discipline if they had any—whether there was order or disorder? A. I was in the camp a few days and their discipline was very bad, judging from the sentinels on duty.

Q. What was the appearance of the men? A. They were very rough looking men, and badly clad when they came.

Q. Were they orderly or disorderly—had you seen soldiers before?

Mr. BOYDEN. Ask what was their behavior.

Q. What was their behavior? A. About the stores and about town they behaved themselves. I was not often around the camp.

Q. What did they do in the county?

Mr. BOYDEN. State from your own knowledge.

Q. Do you know whether they arrested anybody or not? A. I was trying to think whether there was anybody under guard. I was trying to think whether they were taking them to camp.

Q. State all you know. A. I suppose I saw between 30 and 50 at one time.

Q. Give the names of them if you can. A. I saw Mr. Bingham, Dr. Mebane and two or three by the name of Whitsett. I saw Rogers and Murray and Johnson and a good many others. That is just as the names occur to me.

Q. Go on and mention them. A. I saw Mr. Scott.

Mr. BADGER. Give him the list. He probably knows all of them.

The WITNESS. If I had a list I could tell. I know the

the persons I saw under guard. I may have seen them at different times.

Q. Take this list and say if you saw any of the persons named therein guarded, [giving the witness a copy of the articles of impeachment.] A. [Referring to the list.] I saw Lucien H. Murray, Rogers, William Bingham, Alexander Wilson.

Q. [By Mr. Graham.] Is that Dr. Wilson? A. Yes, sir. I don't recollect certainly the next name nor the next. I saw John Andrews, Frederick Blanchard, Adolphus G. Moore, James N. Holt. I saw Patton, I think it is Alexander, but I am not confident, Lemuel Whitsett. I saw a prisoner by the name of Steel. I don't know certainly whether it was Sidney or not. I saw Thomas Ray, Henry Cook, William Andrews, Thomas Gray; I saw a man by the name of Younger—I don't know his first name; Dr. Mebane, William Whitsett; I saw two Whitsetts, I think; I have forgotten their names; I saw Albert Murray, W. D. Montgomery—no, I omit that name, I am not confident—I saw him down street; I saw John G. Albright, and Robert Hanna, Henderson Scott, William Stockard. John G. Albright and Robert Hanna were required to report, and I saw them in camp. James Foust, I saw him reporting there and others; yes, I saw him under guard another time. I saw John Curtis, Robert Stockard, James T. Hunter and James S. Scott.

Q. Who commanded these armed men? A. George W. Kirk was addressed and understood to be the commander.

Q. Who else? A. The lieutenant colonel was named Burgen.

Q. Who else? A. The major was called Yates; he was addressed as major.

Q. He acted in that capacity? A. Yes, sir.

Q. Do you know that there were two hundred men when they first came? A. I suppose about that number when they first came.

Q. State what was their reputation in the neighborhood fo violence and outrage if they had any ——

Mr. SMITH. Mr. Chief Justice, we object to the questi—o These are facts to be proved like any other facts, not by r—e utation. If there was violence and disorderly conduct it— i easy to prove them without seeking to obtain it by gene— ra reputation.

Mr. MERRIMON. The ruling has been already made that we may show the violent character of this man Kirk, and we propose to prove that his men had the same reputation for miles for these outrages.

Mr. SMITH. The court has not ruled that point at *all.* The court has ruled that you have a right to inquire into the character for recklessness and lawlessness of the men engaged in this service. What their character and conduct was at Company Shops is a matter to be determined by proof of facts, as any other facts are proved, and not by reputation. This is not one of the cases where reputation is admissible to show the general character of a party. It may be material as showing motive to prove that men of previous bad character were appointed, but when you undertake to hold any one responsible for the misconduct of troops it must not be done by showing that the reputation of their conduct was bad, but that in fact it was bad.

Mr. MERRIMON. One of the material allegations running through these articles of impeachment is that the responde brought these desperate men, Kirk and his officers and s diers to, accomplish his purpose, and the court has held it w competent to prove bad character and conduct as attached Kirk. We propose in the same way to show the lawless an desperate character of the troops.

The CHIEF JUSTICE. You have not asked the witne whether he knows their character before they came to Co pany Shops.

Mr. MERRIMON. I do not propose, Mr. Chief Justice, t confine the question to their character before.

The CHIEF JUSTICE. The presiding officer is of opinion that the character of the men before they came can be proved by general reputation, but in regard to their conduct and action while here, it must be proved like any other fact by some witness who saw it, and knows it of his own knowledge.

By Mr. MERRIMON—[resuming.]

Q. Do you know of any violence on the part of these men when they were under arms in command of Kirk, Burgen and Yates? A. No, sir, no violence. I heard men cursing on guard, but I saw no violent acts.

Q. State what you know about that cursing? A. I have not heard them cursing the prisoners, but cursing among themselves, showing a want of discipline.

Q. What was the state of the discipline? A. The only means I have of judging was from the guards around the prisoners.

Q. What was that? A. It was bad as it could have been.

By the CHIEF JUSTICE.

Q. You mean that you heard them cursing while on duty? A. Yes, sir.

Q. Were they drunk? A. No, sir. By bad discipline I mean they were sticking their bayonets into the ground, and calling to the officer of the guard that their time was out, and cursing about it and sitting down at times. There seemed to be no discipline.

Q. They didn't behave as soldiers? A. No, sir.

Q. Did you ever see any troops like these before? A. I never saw any with such imperfect discipline.

Q. What is the age of Henderson Scott? A. He is an old man. I cannot state, but he is probably 60 or 70 years old.

Q. State his condition at the time you saw him if you know it? A. I had known him to be a lame man. I never knew the particulars of his disease. I understand his leg was diseased.

Q. Do you know whether that was brought to the attention

of the officer there? A. As I went into the camp I met a party going out for medicine for him, but I don't know what communication there was with the officer.

Q. Could anybody see from looking at him that he was a lame and crippled man? A. They could not know otherwise.

Q. Was he a feeble man otherwise? A. I think he showed that he was. He had that appearance.

Q. What was the character of Mr. Scott? A. He is looked upon as one of the best citizens in the county.

Q. What is his character for morality? A. I never heard it questioned. He is a prominent man in the church.

Q. What church? A. The Haw Fields church.

Q. State if you know the relations existing between the white and black people in the county of Alamance—whether friendly or unfriendly? A. They are friendly as far as I know.

Q. Did you have an extensive acquaintance in that county? A. I knew the people in the county, but I did not know them at their houses.

By Mr. Boyden.

Q. Both races? A. Yes, sir.

Q. What was the state of feeling? A. They frequently came to the store with the parties who employed them.

Q. Did they interchange labor? A. Yes, sir.

Q. The white people employed the blacks? A. Yes, sir.

Q. State whether the employers and employed came to your store very frequently? A. Frequently.

Q. For what? A. Trading.

Q. Do you know whether white men occasionally came to your store, and asked you to allow colored men to have goods upon their credit? A. Yes, sir, they have brought orders; but it were confined to persons in the village generally.

Q. Do you know of any transactions of that sort occurring at your own store? A. I know we received orders to let "the bearer" have goods, the bearer being a colored person.

Q. State whether you know of any case of resistance to the

authority of a magistrate or sheriff? A. I never heard of any, and I never knew of any.

Q. Do you know whether the courts were open, and business was conducted as usual? A. They were.

Q. There is a magistrate's court in your town? A. Yes, sir.

Q. Who is the magistrate there? A. William B. Faucett.

Q. What is his political affinity? A. He was elected as a candidate of the republican party, as I understand.

Q. Who was the constable? A. The deputy sheriff did the business in that place; I think Wylie Wood was the last.

Q. State whether at any time you were charged with any papers issued by the chief justice of this state, to be served upon George W. Kirk, and if so, what you know about it? A. I was requested by Mr. Parker to deliver a copy of the writ of *habeas corpus* to George W. Kirk; Mr. Parker being the counsel for the petitioners.

Q. State what you did, and under what circumstances, and what Kirk said, if anything, and all you know about it? A. It was the day before the return of the writs before the chief justice. I do not know the exact date, but it was about the seventeenth.

Q. Monday or Tuesday? A. It was on a Sunday, the day before the return of the writs before the chief justice.

Q. State what you did? A. I went and overtook the command on the road to Yanceyville.

The CHIEF JUSTICE. It was the Saturday that they started.

Q. Where did they start from? A. I think Kirk moved the day before, on Saturday, from Company Shops, in the direction of Yanceyville. I went the next morning with the writs placed in my hands, and overtook him about ten miles on that road. I saw the officer of the rear guard, and asked him for Colonel Kirk, as I wished to see him. The regiment was halted, and I was carried forward, and I communicated with Kirk and told him—I first met Lieutenant Burgen, and approached him with the papers. At the time I thought he

was Kirk, and delivered the papers to him, he read them, and asked me to go forward and see the colonel. The gentleman who was with me proposed to go, but Burgen intimated to me that he would not be wanted. I reached the head of the regiment, and Colonel Kirk had a portion of one of the writs read over to him by Lieutenant Burgen and the matter explained. Then the troops followed up, as I reported the ——

Q. You need not mention that, we want you to tell the matter as if you had never told it to any one before? A. I cannot recollect the conversation distinctly. If I could be allowed to refresh my memory I could state it.

Q. State it as near as you can?

Mr. MERRIMON. We offer to let him look at his affidavit to refresh his memory, [hands a copy of the affidavit as printed to the witness.]

A. Can I be permitted to read from this?

The CHIEF JUSTICE. You can read it over, and then tell the court the facts as they enable you to recall them. A. [After reading the affidavit.] I recollect that he said that he could not regard the papers—could not notice them, or something to that effect. I can't recollect his words—that he could not notice such papers.

Q. What word did he send to the chief justice? A. That was a part of the message.

Q. [By Mr. Smith.] State what he said? A. He said he could not notice the papers, that they had "played out." He said take the papers back and tell them that a court has been appointed to try—I suppose, the parties.

Q. Try who? A. I inferred the petitioners. He said take the paper back.

Q. [By the Chief Justice.] A court had been appointed to try them, and that he must take the papers back? A. Yes, sir.

Q. Do I understand you to say that he said for you to take the papers back, that such papers were "played out?"

Mr. SMITH. He did not say that.

Q. [By the Chief Justice.] State it over again? A. He

said he could not notice, as I recollect it, such papers. And I think in the connection he said that they had "played out." I probably made some remark to ascertain his intention, and he told me to take the papers back to the court, and that a court acting under orders of the governor had been appointed to try them, and he would not deliver them up unless force was sent to take them away from him.

Q. You returned to Raleigh? A. I returned to Raleigh the next morning. He turned to the lieutenant-colonel, and remarked that he had ordered him not to allow such papers to be presented or brought to him.

Q. What was his manner when he said so? A. He became a little excited during the conversation.

Q. Do you know whether these armed men had possession of the court house at Graham? A. No, sir, I was not in Graham.

Q. Do you know of your own knowledge that squads of men were sent over the country there to arrest persons? A. I saw squads going into the country, and I saw one of the citizens of the Shops arrested by a squad.

Q. Was any colored man in company with these squads? A. Yes, sir, a colored man aided in the arrest of captain Thornburg in the village.

Q. What was his name? A. Ruffin.

Q. What was his given name. [The witness hesitates.]

Mr. GRAHAM. One's name is Aleck and the other's Hark? A. It was Aleck.

Q. These colored men stayed about the camp of soldiers? A. Saw them on duty as guard.

Q. Were they in uniform? A. Yes, sir.

Q. What as to their arms—muskets and pistols? A. Muskets.

Q. Did you see them have pistols and swords? A. I don't recollect any swords, and I am not sure that I saw any pistols.

Cross-Examination.

By Mr. BOYDEN.

Q. What political party do you belong to? A. The conservative democratic.

Q. Are you the member of the house of representatives from that county? A. Yes, sir.

Q. Do you know of any secret political organization in the county of Alamance? A. I have no knowledge, only from the developments in the bench warrant cases.

Q. You have no knowledge of them personally? A. No, sir.

Q. You have never known them in their camps? A. No, sir.

Q. You have never seen them in disguise? A. No, sir.

Q. Do you know of any violations or outrages committed upon colored people in the county of Alamance? A. I saw Joseph Harvey the morning after he was whipped.

Q. What was his condition? A. I saw no signs of violence. He said he had been whipped.

Q. He is the only one you have seen? A. No, sir, I saw Mr. Corliss.

Q. Do you know about that matter of Corliss's? A. I saw him about five or seven days after he was said to have been hurt.

Q. Where was he? A. He was in my store.

Q. Did you see any marks upon his person? A. I do not recollect distinctly. There was some scars on his face. I understood a part of his head had been shaved.

Q. Do you know of any other? A. No other.

Q. State if you know the feeling existing among the white people or the conservative people, touching this man Corliss, was it unkind?

Mr. GRAHAM. I think the question is one of doubtful propriety—whether the witness knows the state of feeling in the community. I do not think it capable of being proved as you can prove character.

Mr. BOYDEN. What I want to know is whether the wit-

ness knows the state of feeling in the democratic party in respect to Corliss.

The CHIEF JUSTICE. Do you mean some members of the democratic party or the party generally?

Mr. BOYDEN. I mean the state of feeling in the town. I will confine it to Company Shops.

Mr. GRAHAM. How can the witness get information to form that opinion except from the hearsays in the county.

Mr. BOYDEN. I would ask the counsel how they know the state of feeling being kind towards the colored people except by hearsay.

The CHIEF JUSTICE. The presiding officer is of the opinion that the evidence is competent. The witness may know the state of feeling.

Mr. MERRIMON. But the question, Mr. Chief Justice, is whether a particular party had any prejudice towards this man?

The CHIEF JUSTICE. The question is whether there was a bad state of feeling on the part of the democratic party towards him. I think the question is competent.

The WITNESS. I cannot say that as a party there was. There was some feeling against him on account of a report that came with him to the Shops that he carried a colored man into the church at Hawfields, and the young men who stopped at the hotel where he boarded disliked him for intruding himself in their conversations.

Q. There was an unkind feeling among the young men toward him? A. I do not know any more than I have heard the thing spoken of, that he would come up without invitation and join in conversation sometimes.

Q. I do not ask what caused it. I ask if such a state of feeling existed? A. I don't know to what extent.

Q. Did it exist at all? [No answer.]

By the CHIEF JUSTICE.

Q. Was there an unkind feeling towards him on the part of the young men alone or was it of the party? A. I cannot say

Q. Do you know of any colored men in your section who have been whipped? A. I have heard of some.

Q. I ask you if you know of any? A. I do not know of any of my own knowledge.

Q. Did you see their persons where they had been whipped? A. No, sir, I never did.

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Q. I do not allude to the Masons. You live in what place? A. In Pleasant Grove, Alamance county.

Q. I wish to ask you if a good many colored people in Alamance county within the last year have left to your knowledge? A. There have some left. I have heard of a good many leaving.

Q. Do you know the reason of their leaving? A. No, sir, I do not.

Q. You know no particular reason? A. Not of my own knowledge.

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Q. Your army acquaintance enabled you to become very well acquainted with the young men of your district and township? A. Yes, sir.

Mr. BOYDEN. We object to that.

Senator ROBBINS, of Rowan. I give notice, Mr. Chief Justice, that I shall make a motion for a recess at the close of the case for the Managers to give sufficient time for the report to be printed and distributed among counsel for the respondent so that they may have an opportunity to prepare for their defence.

ALEXANDER C. McALLISTER, *a witness called on behalf of the Managers, being duly sworn, testified as follows:*

By Mr. Merrimon.

Q. State your name, residence and business? A. Alexander C. McAllister. I reside in Alamance county, Company Shops.

Q. How long have you resided there? A. Since 1865.

Q. State whether you saw any armed men in the county of Alamance during the months of July and August, and if so, what their character, appearance and demeanor were? A. I saw a body of men arrive at Company Shops in the month of July, I suppose about two hundred in number. I cannot estimate them accurately.

Q. How did they come, and what did they do—what was their discipline? A. They arrived on the cars. They were very badly clad. I only saw them as they got off the train and marched off to camp.

Q. Which way did they come from. A. From the west.

Q. State anything further that you know about them? A. They were uniformed in a few days. They had a military camp a few yards from where my business was.

Q. State their discipline if they had any—whether there was order or disorder? A. I was in the camp a few days and their discipline was very bad, judging from the sentinels on duty.

Q. What was the appearance of the men? A. They were very rough looking men, and badly clad when they came.

Q. Were they orderly or disorderly—had you seen soldiers before?

Mr. BOYDEN. Ask what was their behavior.

Q. What was their behavior? A. About the stores and about town they behaved themselves. I was not often around the camp.

Q. What did they do in the county?

Mr. BOYDEN. State from your own knowledge.

Q. Do you know whether they arrested anybody or not? A. I was trying to think whether there was anybody under guard. I was trying to think whether they were taking them to camp.

Q. State all you know. A. I suppose I saw between 30 and 50 at one time.

Q. Give the names of them if you can. A. I saw Mr. Bingham, Dr. Mebane and two or three by the name of Whitsett. I saw Rogers and Murray and Johnson and a good many others. That is just as the names occur to me.

Q. Go on and mention them. A. I saw Mr. Scott.

Mr. BADGER. Give him the list. He probably knows all of them.

The WITNESS. If I had a list I could tell. I know the

the persons I saw under guard. I may have seen them at different times.

Q. Take this list and say if you saw any of the persons named therein guarded, [giving the witness a copy of the articles of impeachment.] A. [Referring to the list.] I saw Lucien H. Murray, Rogers, William Bingham, Alexander Wilson.

Q. [By Mr. Graham.] Is that Dr. Wilson? A. Yes, sir. I don't recollect certainly the next name nor the next. I saw John Andrews, Frederick Blanchard, Adolphus G. Moore, James N. Holt. I saw Patton, I think it is Alexander, but I am not confident, Lemuel Whitsett. I saw a prisoner by the name of Steel. I don't know certainly whether it was Sidney or not. I saw Thomas Ray, Henry Cook, William Andrews, Thomas Gray; I saw a man by the name of Younger—I don't know his first name; Dr. Mebane, William Whitsett; I saw two Whitsetts, I think; I have forgotten their names; I saw Albert Murray, W. D. Montgomery—no, I omit that name, I am not confident—I saw him down street; I saw John G. Albright, and Robert Hanna, Henderson Scott, William Stockard. John G. Albright and Robert Hanna were required to report, and I saw them in camp. James Foust, I saw him reporting there and others; yes, I saw him under guard another time. I saw John Curtis, Robert Stockard, James T. Hunter and James S. Scott.

Q. Who commanded these armed men? A. George W. Kirk was addressed and understood to be the commander.

Q. Who else? A. The lieutenant colonel was named Burgen.

Q. Who else? A. The major was called Yates; he was addressed as major.

Q. He acted in that capacity? A. Yes, sir.

Q. Do you know that there were two hundred men when they first came? A. I suppose about that number when they first came.

Q. State what was their reputation in the neighborhood f violence and outrage if they had any ——

Mr. SMITH. Mr. Chief Justice, we object to the questio These are facts to be proved like any other facts, not by re utation. If there was violence and disorderly conduct it easy to prove them without seeking to obtain it by gene reputation.

Mr. MERRIMON. The ruling has been already made that may show the violent character of this man Kirk, and we p pose to prove that his men had the same reputation for m for these outrages.

Mr. SMITH. The court has not ruled that point at all. The court has ruled that you have a right to inquire into the character for recklessness and lawlessness of the men engaged in this service. What their character and conduct was at Company Shops is a matter to be determined by proof of facts, as any other facts are proved, and not by reputation. This is not one of the cases where reputation is admissible to show the general character of a party. It may be material as showing motive to prove that men of previous bad character were appointed, but when you undertake to hold any one respon sible for the misconduct of troops it must not be done showing that the reputation of their conduct was bad, that in fact it was bad.

Mr. MERRIMON. One of the material allegations runr through these articles of impeachment is that the respon brought these desperate men, Kirk and his officers an diers to, accomplish his purpose, and the court has held competent to prove bad character and conduct as attac Kirk. We propose in the same way to show the lawl desperate character of the troops.

The CHIEF JUSTICE. You have not asked the whether he knows their character before they came pany Shops.

Mr. MERRIMON. I do not propose, Mr. Chief J confine the question to their character before.

The CHIEF JUSTICE. The presiding officer is of opinion that the character of the men before they came can be proved by general reputation, but in regard to their conduct and action while here, it must be proved like any other fact by some witness who saw it, and knows it of his own knowledge.

By Mr. MERRIMON—[resuming.]

Q. Do you know of any violence on the part of these men when they were under arms in command of Kirk, Burgen and Yates? A. No, sir, no violence. I heard men cursing on guard, but I saw no violent acts.

Q. State what you know about that cursing? A. I have not heard them cursing the prisoners, but cursing among themselves, showing a want of discipline.

Q. What was the state of the discipline? A. The only means I have of judging was from the guards around the prisoners.

Q. What was that? A. It was bad as it could have been.

By the CHIEF JUSTICE.

Q. You mean that you heard them cursing while on duty? A. Yes, sir.

Q. Were they drunk? A. No, sir. By bad discipline I mean they were sticking their bayonets into the ground, and calling to the officer of the guard that their time was out, and cursing about it and sitting down at times. There seemed to be no discipline.

Q. They didn't behave as soldiers? A. No, sir.

Q. Did you ever see any troops like these before? A. I never saw any with such imperfect discipline.

Q. What is the age of Henderson Scott? A. He is an old man. I cannot state, but he is probably 60 or 70 years old.

Q. State his condition at the time you saw him if you know it? A. I had known him to be a lame man. I never knew the particulars of his disease. I understand his leg was diseased.

Q. Do you know whether that was brought to the attention

of the officer there? A. As I went into the camp I met a party going out for medicine for him, but I don't know what communication there was with the officer.

Q. Could anybody see from looking at him that he was a lame and crippled man? A. They could not know otherwise.

Q. Was he a feeble man otherwise? A. I think he showed that he was. He had that appearance.

Q. What was the character of Mr. Scott? A. He is looked upon as one of the best citizens in the county.

Q. What is his character for morality? A. I never heard it questioned. He is a prominent man in the church.

Q. What church? A. The Haw Fields church.

Q. State if you know the relations existing between the white and black people in the county of Alamance—whether friendly or unfriendly? A. They are friendly as far as I know.

Q. Did you have an extensive acquaintance in that county? A. I knew the people in the county, but I did not know them at their houses.

By Mr. Boyden.

Q. Both races? A. Yes, sir.

Q. What was the state of feeling? A. They frequently came to the store with the parties who employed them.

Q. Did they interchange labor? A. Yes, sir.

Q. The white people employed the blacks? A. Yes, sir.

Q. State whether the employers and employed came to your store very frequently? A. Frequently.

Q. For what? A. Trading.

Q. Do you know whether white men occasionally came to your store, and asked you to allow colored men to have goods upon their credit? A. Yes, sir, they have brought orders; but it were confined to persons in the village generally.

Q. Do you know of any transactions of that sort occurring at your own store? A. I know we received orders to let "the bearer" have goods, the bearer being a colored person.

Q. State whether you know of any case of resistance to the

authority of a magistrate or sheriff? A. I never heard of any, and I never knew of any.

Q. Do you know whether the courts were open, and business was conducted as usual? A. They were.

Q. There is a magistrate's court in your town? A. Yes, sir.

Q. Who is the magistrate there? A. William B. Faucett.

Q. What is his political affinity? A. He was elected as a candidate of the republican party, as I understand.

Q. Who was the constable? A. The deputy sheriff did the business in that place; I think Wylie Wood was the last.

Q. State whether at any time you were charged with any papers issued by the chief justice of this state, to be served upon George W. Kirk, and if so, what you know about it? A. I was requested by Mr. Parker to deliver a copy of the writ of *habeas corpus* to George W. Kirk; Mr. Parker being the counsel for the petitioners.

Q. State what you did, and under what circumstances, and what Kirk said, if anything, and all you know about it? A. It was the day before the return of the writs before the chief justice. I do not know the exact date, but it was about the seventeenth.

Q. Monday or Tuesday? A. It was on a Sunday, the day before the return of the writs before the chief justice.

Q. State what you did? A. I went and overtook the command on the road to Yanceyville.

The CHIEF JUSTICE. It was the Saturday that they started.

Q. Where did they start from? A. I think Kirk moved the day before, on Saturday, from Company Shops, in the direction of Yanceyville. I went the next morning with the writs placed in my hands, and overtook him about ten miles on that road. I saw the officer of the rear guard, and asked him for Colonel Kirk, as I wished to see him. The regiment was halted, and I was carried forward, and I communicated with Kirk and told him—I first met Lieutenant Burgen, and approached him with the papers. At the time I thought he

was Kirk, and delivered the papers to him, he read them, and asked me to go forward and see the colonel. The gentleman who was with me proposed to go, but Burgen intimated to me that he would not be wanted. I reached the head of the regiment, and Colonel Kirk had a portion of one of the writs read over to him by Lieutenant Burgen and the matter explained. Then the troops followed up, as I reported the ——

Q. You need not mention that, we want you to tell the matter as if you had never told it to any one before? A. I cannot recollect the conversation distinctly. If I could be allowed to refresh my memory I could state it.

Q. State it as near as you can?

Mr. MERRIMON. We offer to let him look at his affidavit to refresh his memory, [hands a copy of the affidavit as printed to the witness.]

A. Can I be permitted to read from this?

The CHIEF JUSTICE. You can read it over, and then tell the court the facts as they enable you to recall them. A. [After reading the affidavit.] I recollect that he said that he could not regard the papers—could not notice them, or something to that effect. I can't recollect his words—that he could not notice such papers.

Q. What word did he send to the chief justice? A. That was a part of the message.

Q. [By Mr. Smith.] State what he said? A. He said he could not notice the papers, that they had "played out." He said take the papers back and tell them that a court has been appointed to try—I suppose, the parties.

Q. Try who? A. I inferred the petitioners. He said take the paper back.

Q. [By the Chief Justice.] A court had been appointed to try them, and that he must take the papers back? A. Yes, sir.

Q. Do I understand you to say that he said for you to take the papers back, that such papers were "played out?"

Mr. SMITH. He did not say that.

Q. [By the Chief Justice.] State it over again? A. He

said he could not notice, as I recollect it, such papers. And I think in the connection he said that they had "played out." I probably made some remark to ascertain his intention, and he told me to take the papers back to the court, and that a court acting under orders of the governor had been appointed to try them, and he would not deliver them up unless force was sent to take them away from him.

Q. You returned to Raleigh? A. I returned to Raleigh the next morning. He turned to the lieutenant-colonel, and remarked that he had ordered him not to allow such papers to be presented or brought to him.

Q. What was his manner when he said so? A. He became a little excited during the conversation.

Q. Do you know whether these armed men had possession of the court house at Graham? A. No, sir, I was not in Graham.

Q. Do you know of your own knowledge that squads of men were sent over the country there to arrest persons? A. I saw squads going into the country, and I saw one of the citizens of the Shops arrested by a squad.

Q. Was any colored man in company with these squads? A. Yes, sir, a colored man aided in the arrest of captain Thornburg in the village.

Q. What was his name? A. Ruffin.

Q. What was his given name. [The witness hesitates.]

Mr. GRAHAM. One's name is Aleck and the other's Hark? A. It was Aleck.

Q. These colored men stayed about the camp of soldiers? A. Saw them on duty as guard.

Q. Were they in uniform? A. Yes, sir.

Q. What as to their arms—muskets and pistols? A. Muskets.

Q. Did you see them have pistols and swords? A. I don't recollect any swords, and I am not sure that I saw any pistols.

Cross-Examination.

By Mr. BOYDEN.

Q. What political party do you belong to? A. The conservative democratic.

Q. Are you the member of the house of representatives from that county? A. Yes, sir.

Q. Do you know of any secret political organization in the county of Alamance? A. I have no knowledge, only from the developments in the bench warrant cases.

Q. You have no knowledge of them personally? A. No, sir.

Q. You have never known them in their camps? A. No, sir.

Q. You have never seen them in disguise? A. No, sir.

Q. Do you know of any violations or outrages committed upon colored people in the county of Alamance? A. I saw Joseph Harvey the morning after he was whipped.

Q. What was his condition? A. I saw no signs of violence. He said he had been whipped.

Q. He is the only one you have seen? A. No, sir, I saw Mr. Corliss.

Q. Do you know about that matter of Corliss's? A. I saw him about five or seven days after he was said to have been hurt.

Q. Where was he? A. He was in my store.

Q. Did you see any marks upon his person? A. I do not recollect distinctly. There was some scars on his face. I understood a part of his head had been shaved.

Q. Do you know of any other? A. No other.

Q. State if you know the feeling existing among the white people or the conservative people, touching this man Corliss, was it unkind?

Mr. GRAHAM. I think the question is one of doubtful propriety—whether the witness knows the state of feeling in the community. I do not think it capable of being proved as you can prove character.

Mr. BOYDEN. What I want to know is whether the wit-

ness knows the state of feeling in the democratic party in respect to Corliss.

The CHIEF JUSTICE. Do you mean some members of the democratic party or the party generally?

Mr. BOYDEN. I mean the state of feeling in the town. I will confine it to Company Shops.

Mr. GRAHAM. How can the witness get information to form that opinion except from the hearsays in the county.

Mr. BOYDEN. I would ask the counsel how they know the state of feeling being kind towards the colored people except by hearsay.

The CHIEF JUSTICE. The presiding officer is of the opinion that the evidence is competent. The witness may know the state of feeling.

Mr. MERRIMON. But the question, Mr. Chief Justice, is whether a particular party had any prejudice towards this man?

The CHIEF JUSTICE. The question is whether there was a bad state of feeling on the part of the democratic party towards him. I think the question is competent.

The WITNESS. I cannot say that as a party there was. There was some feeling against him on account of a report that came with him to the Shops that he carried a colored man into the church at Hawfields, and the young men who stopped at the hotel where he boarded disliked him for intruding himself in their conversations.

Q. There was an unkind feeling among the young men toward him? A. I do not know any more than I have heard the thing spoken of, that he would come up without invitation and join in conversation sometimes.

Q. I do not ask what caused it. I ask if such a state of feeling existed? A. I don't know to what extent.

Q. Did it exist at all? [No answer.]

By the CHIEF JUSTICE.

Q. Was there an unkind feeling towards him on the part of the young men alone or was it of the party? A. I cannot say

except as to my own feeling. The man and his conduct were discussed but I cannot say what the state of feeling was.

Q He was unpopular in his manners? A. It was so reported to me.

By MR. BOYDEN, [resuming.]

Q. Do you live at the Shops? A. Yes, sir.

Q. Were you there the night he was chastised? A. Yes, sir.

Q. Tell us all you know about it? A. I know nothing about it. I did not hear it.

Q. You were not aroused? A. No, sir, it was in a different part of the village.

Q. You did not see him for some seven days? A. For five or seven I think it was.

Q. How soon after that did he leave there? A. I am not certain, but I think he left the next week after the trial before the magistrate.

Q. What trial do you speak of? A. He had a number of men arrested in the village who were charged with whipping him.

Q. Were you at the trial? A. No, sir. The parties passed through my store to the magistrate's room over the store.

Q. Did you hear what took place? A. No, sir.

Q. How soon was this after that occurrence? A. I think it was the first I had seen of him—the day of the trial.

Q. That was five or seven days after he had been chastized? A. Yes, sir.

Q. And he went away from there the next week? A. That is my recollection.

Q. He has never been back? A. No, sir.

Q. Did you know a man of the name of Meader? A. Yes, sir.

Q. What sort of a man was he—was he a northern man? A. Yes, sir, said to be.

Q. Corliss was a northern man? A. Understood to be.

Q. What was the state of feeling towards Meader? A. I think it was kind.

Q. When did he leave? A. After the burning of Mr. Worth's school house. I think he went off in the neighborhood of New London. He was called back by Mr. Worth to take a second school.

Q. He has left the county? A. I cannot say. There was a little feeling toward Meader at one time but that was removed I think before he left.

Q. Do you know Mr. Shoffner? A. I met him a few times.

Q. When did he leave? A. I don't know the date, but I it was soon after his return from the legislature.

Q. I ask you if you know the state of feeling generally on the part of the democratic or conservative party towards Mr Shoffner? A. I think it is pretty bitter.

Q. Why? A. On account of the introduction of what is known as the Shoffner bill.

Q. Do you know anything of why he left the county? A. I do not.

Q. Was he a member of the legislature previous to the time he left? A. Yes, sir.

Q. How long did he remain in the county after he came from the legislature. A. I cannot say, my impression is that he did not remain there very long, whether a month or two or a week I cannot say.

Q. Of which body was he a member? A. He was a senator.

Q. Did you hear any threats against his life? A. I did not.

Q. Did you hear any threats about running him off from the county? A. I cannot say that I ever heard any threat of the kind.

Q. Did you hear any threats of any kind against him? A. No, sir, I don't recollect any threat.

Q. Have you any personal knowledge, or do you know anything about an attempt to assassinate him in any shape? A. I do not.

Q. Do you know anything about men going after him there for any purpose? A. Not of my own knowledge.

Q. You did not see them following after him? No, sir.

Q. Or hear them inquire after him? A. No, sir.

Q. Have you no personal knowledge who it was that went to near Gilbraith's bridge and turned back with Doctor Moore when they were after him? A. No, sir.

Mr. MERRIMON. I beg to submit, Mr. Chief Justice, that that is an improper way to put the question. There is no evidence that anybody went to Gilbraith's bridge.

The CHIEF JUSTICE. Is it not proper to assume the fact?

Q. Do you know of Doctor Moore going to meet any man? A. Only from what I have heard said.

Q. Do you know anything about the death of Outlaw? A. I do not.

Q. You did not see his body? A. No, sir.

Q. You know nothing about the death of Puryear? A. I do not.

Q. You did not see his body? A. No, sir.

Q. Have you seen any person there at Company Shops with what are called the Ku Klux disguises on? A. I never have.

Q. You say that if there was any secret organizations in the county of Alamance you have no knowledge of them? A. No, sir, no knowledge.

Re-Direct Examination.

By Mr. MERRIMON.

Q. You say that you did not understand there was any prejudice against Corliss on the part of the people there as constituting a party? A. None, I think.

Q. You did say there was some prejudice among the young men about town and you went on to say and did state partially the ground of that prejudice. I ask you to state the ground as you understood it? A. I said there was some report that come with him that he took colored people into the church at Mebanesville where there was no provision made for colored people.

Q. [By Mr. BOYDEN.] They did not permit colored people there in the church? A. It was a small house.

Q. Did you understand that the colored man was seated among the white people? A. That was the report.

Q. [By the Chief Justic.] What else? A. I heard the young men complain of his approaching them in conversation without being invited.

Q. He was offensive? A. Yes, sir.

Q. Interfering with people engaged in conversation when he was not invited? A. Yes, sir.

Q. Was it understood that he would make offensive remarks? A. Yes, sir.

Q. He would enter into conversation without being invited and make offensive suggestions? A. Yes, sir, that was the understanding.

Q. And they were prejudiced against him growing out of these two matters? A. There may have been some prejudice on account of his teaching a colored school.

Q. Do you know that.

By the CHIEF JUSTICE.

Q. From the general talk what conclusion did you come to in that respect? A. I think there was some prejudice on that account.

Q. Do you remember the particular circumstances under which he took this colored man into church at Mebansville? A. The report which I heard was that he carried a man into church without permission and without asking. The colored people had not been in the habit of attending that church and there was no provision for them. One of the officers of the church—I think he was an officer—proposed to furnish him a seat at the door where the colored man could hear.

Q. Then what was done—how did it terminate? A. I think the colored man occupied the chair near the door.

Q. State whether these two classes of people occupy their own churches in your part of the country? A. They do generally.

Q. Are there any provisions made in the white churches for colored people? A. In the Union church at Company Shops

there is the gallery, but I don't suppose there has been twenty colored people in there since that time.

Q. Is it customary for the colored and white people to sit together in the same church? A. No, sir.

Q. They sit apart? A. Yes. sir.

Q. State whether there was any complaint made against Mr. Corliss for having taken a colored man into a church and seating him among the white people? A. Yes, sir, that was the report that come with him and it was criticized freely. It was the source of some feeling against him.

Q. State if you know when he sued on the state's warrant when these parties were discharged by the magistrate?

Mr. BOYDEN. The witness was not present, he can't know anything about it.

Mr. GRAHAM. The fact was called out on cross-examination by yourself that there was a trial.

Mr. BOYDEN. I asked him if he was present and he said he was not and I stopped him.

A. A portion of the trial was held in the office of the railroad agent. I went to the door of the office when the trial was progressing and remained for a moment. They adjourned from that place to the magistrate's room over my store.

Q. Do you know whether they bound them over or not? A. When they came down I understood they did not.

Q. You say there was considerable prejudice against Shoffner? A. I can't say there was—I don't recollect that there was any feeling against him only on account of the introduction of that bill.

Q. He was a senator representing that county in the senate? A. That county and Guilford.

Q. And he introduced a bill called the Shoffner act? A. Yes, sir, so I understand.

Q. You say that the feeling against him grew out of that fact. I ask you whether that bill was very offensive to the people in that part of the country? A. Yes, sir.

Q. It is understood to be a reflection upon them?

Mr. BOYDEN. We object to the question.

The CHIEF JUSTICE. You may prove with what feeling the introduction of the bill was received.

Q. Did that feeling grow out of the introduction of that bill? A. That is my understanding, altogether. I know nothing else against Mr. Shoffner.

Q. Was that bill especially offensive to the people of the county there? A. I think it was.

Q. They complained of him in that connection? A. Yes, sir.

Q. Was he offensive otherwise—was there any prejudice against him simply because he was a republican? A. None that I am aware of.

Q. Was he a man of much character there? A. I cannot say I know his character any way.

Q. Had he any reputation as a political leader?

Mr. BOYDEN. That is not the way to examine the witness. The witness must be enquired of as to what was his reputation.

Q. State whether he had any reputation as a political leader —whether he was prominent or obscure? A. I don't know that he was ever in public life before—I cannot say.

Q. What was his business at home? A. I am unable to say, but I think he lived on a farm. I don't know how he made his living.

Q. Had he any prominence or was anything said about him except in connection with the introduction of this bill? A. I cannot think of anything now that gave him notoriety. I don't think he had much before.

The hour of half-past two having arrived, the court adjourned till to-morrow at eleven o'clock, A. M.

FOURTEENTH DAY.

SENATE CHAMBER, Feb. 11th, 1871 [illegible]1.

The COURT met at eleven o'clock pursuant to adjou[illegible] ourn ment, Hon. Richmond M. Pearson, chief justice of the supre[illegible] rem court, in the chair.

The proceedings opened by proclamation in due form [illegible] n by the door keeper.

The CLERK called the roll of senators and the followi[illegible] wing gentlemen were found to be present:

Messrs. Adams, Allen, Battle, Beasley, Bellamy, Brogd[illegible] den, Brown, Cook, Council, Cowles, Crowell, Dargan, Edwar[illegible] ards, Eppes, Flemming, Graham, of Orange, Hawkins, Hym[illegible] man, Jones, King, Latham, Ledbetter, Lehman, Linney, Lo[illegible] ove, Mauney, McCotter, Merrimon, Moore, Morehead, Olds, R[illegible] Robbins, of Davidson, Robbins, of Rowan, Skinner, Speed, Tr[illegible] roy, Warren, Whiteside, Worth—39.

Senetor WHITESIDE moved that the reading of [illegible] the journal of the proceedings of yesterday be dispensed with. [illegible]

The CHIEF JUSTICE put the question on the motion [illegible] on o Senator Whiteside and it was decided in the affirmative.

JAMES S. SCOTT, *a witness called on behalf of the M.* [illegible] *Managers being duly sworn, testified as follows:*

By Mr. MERRIMON.

Q. What is your name, age and residence? A. James [illegible] nes Scott, age forty-three, residence Graham, Alamance count[illegible] nt;

Q. State whether in the months of July and August y[illegible] t y saw any armed men in the neighborhood of where you liv[illegible] liv and if so, under what circumstances, any if they did anythin[illegible] thin to you, what? A. In the month of July a squad of arm[illegible] med men came to my store and an officer calling himself Burge[illegible] gen said he wanted to see me. He asked me my name, and aft[illegible] ter asking me about some purchases of bacon he asked me to [illegible] o

out in the street. He had a piece of paper with names on it, and he said he wanted me to go to the Shops. I then asked him if he belonged to the militia at the Shops, and he said he did. I asked him by what authority he arrested me; he said he could not show any authority but his authority was from the governor and the president of the United States for my arrest and that I must go along.

Q. Go on and give us a statement of what he did with you? A. He then arrested, I think, two other men.

Q. Who were they? A. Mr. Boyd and Mr. Hunter, and he placed us under guard and started us for the Shops.

Q. Were the guard armed? A. Yes, sir, they marched us with fixed bayonets and pistols in their hands. The command was given by this man Burgen to go in this condition, Each of us was placed between two soldiers with fixed bayonets. I was marched beside an officer with what I supposed to be a navy pistol in his hand. He carried it in his hand all the way.

Q. How far? A. About two and a half miles to the Shops from Graham. I was carried within ten feet of my wife and children and was called upon to stop to know what was the matter. They told me to go forward, that I could not stop. After we got a little on the edge of the town this squad of men halted and this man Burgen remarked that if we had any word to send back to our families he would wait a few minutes to enable us to send back any word; that he was going to send us to camp. There was nobody I believe that wanted to send any word—at least there was no word sent. We were then placed each with two soldiers before and behind each prisoner, and we were marched to the shops in that condition.

Q. What was done then? A. When we got there, this officer reported to a man he called Kirk, and told him he had been directed by Colonel Burgen to deliver these prisoners with his compliments. We were seated under a tree with a guard placed around us, and with the orders if we crossed a line made by bayonets—I don't know anything about military

operations—they must shoot us down. I remarked myself at the time I did'nt know anything about military operations, but that I would be very careful not to cross the line as I did not come there to be shot. I took a seat on a box under the tree and there we stayed all day. We sat for an hour until Kirk came to us to know if we had any arrangements made to have any thing to eat. I told him that we had no time to make any arrangements as we did not expect to be brought to his camp. He remarked that army rations were pretty rough for gentlemen, but he said, "I will provide you with dinner, and per-"haps by night you can have some arrangements made." That was on Friday. We were detained there in the camp during that night. This man Burgen had a talk with me in reference to what was to become of us. I had made some inquiries during the day of Colonel Kirk to know if we could not have a speedy hearing before some tribunal or give bail, and said that we would be willing to give any amount of bail he wanted. There was then only four of us in the camp and we said we could give $500,000 bail for our appearance before any tribunal. He said he was not authorized to admit us to bail, but to hold us in close custody. I asked if he knew when we would have a trial. He did not give me any answer. That night in a conversation with this man Burgen he asked me if colonel Kirk had told me anything about how we were to be tried and what was to become of us. I told him he had not, that I had asked him some questions but had got no information. He then remarked, "I am surprised at Colonel Kirk. It was his place to "tell you. But I tell you now, you are all to be tried by a "court martial. You are to be tried at Yanceyville;" and he remarked "I am one of the court martial and colonel Kirk is "one, but you will all have a fair trial; but the thing is fixed, "you are to be tried in that way; you are to be carried to "Yanceyville. I am surprised that colonel Kirk did not tell "you so that you could provide some means of going there as "you are not used to walking and it will break you down." The next day something was said to colonel Kirk about the

time we were to be tried. I asked the question myself. He counted up on his fingers and in a little while he said, "you will leave here in about five days." During that time some of the friends were there and found out that the command was going to move that evening to Yanceyville, and they sent us a conveyance to ride. There was a number of prisoners, among whom was a crippled man, an uncle of mine.

Q. Tell us what you know about the arrest of Henderson Scott? A. On Saturday, Henderson Scott came to the camp, so he told me——

Mr. BOYDEN. That will not answer, you must tell what you know yourself about it.

Q. He came to see you? A. Yes, sir.

Q. Who was Henderson Scott? A. He was a man who lived near Haw Fields church—in the Haw Fields country.

Q. What is his age? A. He was then about fifty-six years.

Q. What was his condition? A. He was a crippled man; he suffered a great deal from an ankle which was broken ten or twelve years ago. He was unable to walk except with a stick, and was in a very lame condition. He had a wound that was running all the time, and for one or two years, he had medical treatment at least twice a day.

Q. State what, if anything, was done or said to him in your presence? A. While we were setting there we took some dinner that he had brought over with him for us. Colonel Kirk came up and asked him if his name was Henderson Scott. He said it was. He told him to keep his seat that he was a prisoner.

Q. To keep his seat? A. "Keep your seat you are a prisoner." After his arrest, I suppose that was about 12 o'clock, on Saturday, it was mentioned among us, though we did not know whether it was true or not, that the command was to move that evening. Arrangements seemed to be making for some move. They were striking tents, taking them down. It was about three o'clock. I think in the evening that the command did move.

Q. Before you get away from that point, let me ask what was the character of Henderson Scott, in respect to morals, whether he was a religious man, and zealously so? A. He was an elder in the Presbyterian church at Haw Fields, and was looked upon as being one of the prominent members of the church. I never heard anything alleged against him in my life.

Q. Proceed? A. I reckon it was three o'clock in the evening the command moved forward. We rode in a conveyance that had been provided for us, and we had got about ten miles to a place called Moore's store, and there we staid all night. Every thing seemed to be quiet. They permitted Henderson Scott to sleep in a house that was near by, with some officers with him. He was a man in such feeble health, and in such a condition, that it was not safe for him to sleep out. The next morning we moved forward until the middle of the day—it may have been a little after, when the command was allowed to rest an hour. The men were fatigued by walking. Then the command moved forward, and we all got in our conveyance again. There were seven of us. Just as we were about to move, the three officers commanding these troops were standing right near this conveyance we were riding in, and I think it was Kirk who remarked that he had just received news that his command was going to be attacked, and we were to be taken from him or released, and he said "you must all get out "and walk. Your d——d Ku Klux friends have threatened to "attack me and release you all; but if there is a gun fired "at any of my men, I will shoot the last one of you down." That was on Sunday. At that time we were all out, and something was said about this old gentleman being crippled and unable to walk. Some of our men remarked this to one of these officers that he was not able to walk, although he was getting out of the carriage. They told him that he might keep his seat in the carriage, and then he directed the carriage to be filled with some of his own men who were tired, and then the command moved forward.

Q. That was in your conveyance? A. Yes, sir, it had been supplied us.

Q. By citizens? A. By citizens for us to ride in.

Q. Most of the prisoners walked all that evening? A. Some of them—I think Mr. Boyd, was told to get in the conveyance and ride after he had walked awhile. After I had walked a few miles, I was told I might get in a buggy and ride. I think there was another one told he might get in and ride; but the balance I think walked all that evening. We went on to a place—I do not know any name for it—about eight miles from Yanceyville where we encamped that night. There was a tent put up for us all to sleep in and a guard placed around us. We staid there all night. The next morning we moved to Yanceyville. We got to Yanceyville I suppose about twelve o'clock—it may have been a little after. There seemed to be some meeting up stairs in the court house. I did not see anything of it but we were carried into the court house and placed in a room and we remained there two or three days.

Q. State what was said, if anything, when you were put into the room by Burgen or anybody else in charge? A. Burgen marched us into that room. It was the south room of that building. He said, "Gentlemen you are to occupy this room—"it is where Senator Stephens was murdered—this is the room you gentlemen from Alamance will occupy." I forgot to state in a conversation I had with him on the way—on Sunday. He remarked to me that he felt sorry for some of us men—there were only seven of us altogether—that we were to be tried and he said "some of you will never see "home again."

Q. Did he mention any particular one? A. He did not mention any names.

.Q Was Mr. Adolphus Moore among you? A. Yes, sir, he was with as.

Q. Who all were there together prisoners? A. Henderson Scott, A. G. Moore, John Ireland—John Rich Ireland they

call him—James E. Boyd and James T. Hunter.

Q. And yourself? A. And myself.

Q. How long did they keep you in Yanceyville, and what did they do with you there? A. I think I was there something over two weeks. I do not remember the exact time. I was confined in the court house all the time I was there. I was in this room I first spoke of for two or three days, and then was put in the court room with the Caswell peisoners, as they called them. We all staid there until I was paroled and sent home.

Q. Was this court house guarded during that time? A. Yes, sir.

Q. Soldiers in the court house and about it? A. In the court house and around it most of the time. There was—I don't know what they call it—a baricade built out of logs to prevent an attack or anything of that sort in front of the court house. I never have been a soldier, and I do not know the names of these things.

Q. I want to read over certain names to you and see if you remember seeing them in custody, and would be glad to have you say so, Lucien H. Murray? A. There was a great many arrests made in Alamance that I heard of when I was in Yanceyville, and I saw some of the soldiers in charge of persons after I got home.

Q. Did you see them in custody? A. I saw soldiers in charge of them.

Q. Look over that list and see whom you saw? A. I saw Rogers.

Q. Which Rogers? A. George Rogers, Alexander Wilson, Lucien H. Murray, Adolphus G. Moore, James N. Holt, Sydney Steel—I suppose it is the same man. I saw a man named Steel in custody, but I don't know his given name at the time, but I see it put down here. Benjamin McAdams, James Henry Anderson, Jefferson Younger, William Moore, D. W. Weeden, David Moore. There was a young person, I don't know what his name was, but a red-headed boy about

sixteen years old. William Whitsett, Albert Murray, John G. Albright, Robert Hanna; I did not see him in custedy, but I saw him reporting backwards and forwards to the camp. William Johnson, Henderson Scott, Thomas Lutterloh, James Foust, Robert Stockard, James T. Hunter, John R. Stockard. Those are all the names I see here.

Q. Do you remember anybody who was not there? A. I remember that Thomas N. Holt was arrested.

Q. Do you remember seeing colonel Bingham under arrest? A. I did not see him—he and Dr. Mebane. I did not see them.

Q. State what was the manner of Kirk and Burgen as you passed on to Yanceyville, whether coarse or otherwise to the prisoners? A. With the exception of a few curses they gave us——

Q. Did they curse the prisoners or otherwise? A. There was cursing on several occasions.

Q. By whom? A. By both of them.

Q. Give us some idea of the cursings? A. I have never been used to using curse words. They seemed to better versed in them than we were.

Q. Go on and give us a sample? A. On several occasions they called us "d—d rebel Kukluxes"—an epithet I had never heard in Alamance before. I looked upon that as rather coarse language for a gentlemen to receive.

Q. Did they apply them to you frequently?

Mr. BOYDEN. That is leading.

Q. State whether they did or not? A. I don't remember, I think I heard it several times.

Q. Did they curse you violently on any occasion? A. As I said before, he stated that he had been informed that they were to be attacked and we released, and then both of them cursed us very violently for a little time. That was on Sunday after we were on our way to Yanceyville. After we got in the court house there were three or four cursing spells in the pres-

ence of the prisoners; whether it was intended for the whole crowd or not I don't know.

By the CHIEF JUSTICE.

Q. State how it came up? A. On one occasion the colonel commander himself—this man Kirk—came up there and cursed a man by the name of Weeden, giving him a most terrible cursing—told him he was a d—d Kuklux and a d—d traitor.

Q. How did it originate? A. I don't know how it started, but he just came up and called him that.

By MR. MERRIMON, [resuming.]

Q. You don't know how it was provoked? A. I don't know. It was in the presence of all the prisoners. On several occasions there were curses of that kind in relation to "Ku-klux," "rebels," and such like. On one occasion, at the shops, the soldiers—I don't know whether they were on guard or not, but there was a crowd standing around—said of one of our men who was lying asleep, "You see that d—d rebel—I could "pick him off d—d quick; and if I could have my way I "would shoot them all."

Q. Who was it that said that? A. It was one of the soldiers, but I don't know whether he was on guard or not.

Q. State, if you can remember, what they said when they made you get out of the vehicle, if any threats were made that day? A. I have repeated that when we got out of the conveyance we were riding in, the remark was, that he had just got news that the camp would be attacked for our release, and he said "if any of your d—d Ku Klux friends undertake that "thing, or fire a gun, I will shoot the last one of you."

Q. Who was that? A. Kirk and Burgen. There was one man who did not curse any—or I don't remember that he cursed. I recollect that he came forward and told me that the colonel was very violent, but it would wear off after awhile, I recollect he said he was a preacher.

Q. He told you in that conversation that he was a preacher? A. He told me once or twice on the road that he was a Baptist preacher.

Q. He belonged to the church militant I suppose. Did y(see the troops—these armed men? A. I saw them after I w arrested.

Q. Describe their appearance—discipline if they had any- and their intelligence, all that you observed about them. The general conduct? A. I don't know any thing about milita operations.

Q. State what you saw in these men? A. If there is a system in military operations, it looked to me that this w about the worst I had ever seen. I would not be surpris that any army should lose a cause they were fighting in, if th were like them. That was my idea.

Q. Was there any order? A. No, sir.

Q. Was there any subordination to authority? A. No, s the privates would curse the officer of the day—I heard th frequently, when they were on guard duty. I heard them s sometimes that they had remained on duty as long as twent four hours and they would be d—d if they would not thro down their guns and go home, that they were not disposed remain on guard all the time.

Q. What was their grade of intelligence? A. Really, don't think there was any, as far as I was able to judge. The were some officers who seemed to be moderately intellige men.

Q. How were the soldiers? A. I don't think there was a intelligence among them as far as I saw. There were a gre many boys among them.

Q. Can you say whether they were like ordinary citizens the state—whether better or worse?

Mr. SMITH. I don't think that is a proper question.

Q. State their demeanor at the court house at Yancyville- how they behaved themselves. A. I did not get to see mu of their behavior. I was inside the court house.

Q. Did you observe them from the windows or otherwis A. They did not seem to behave like the men raised in n

section of the country. I don't know how to describe their manners.

Q. Did you see them strip and wash at the public pump? A. No, sir, I never saw them do anything of that sort. I saw them washing their faces but I never saw them strip.

Q. I understand you to say there were a good many boys among these men? A. Yes, sir, they appeared so to me.

Q. What age apparently? A. There was some I saw who certainly did not appear to be more than sixteen or seventeen years old. I did not ask them their age, but they had that appearance.

Q. Did you talk with any of them? A. I talked with a few of them when they would carry us out.

Q. Were they intelligent or otherwise? A. I think the ones I talked with could neither read nor write. The most I talked with represented themselves as being from Tennessee. There was some few who said they were from the western counties of the state. I think Mitchell or Yancey counties. But most were from Yancey that I talked with.

Q. I wish you to state whether or not you know that Henderson Scott paid to Burgen any amount of money? A. I know this, that as I came from Yanceyville I came in company with Burgen—or rather he brought me home. He told me that he had orders to arrest Henderson Scott a second time. He said at the same time "He knows all about this Kuklux mat-"ter;" and he said "I have sent word for him to report to me "at camp to-morrow." The next morning Henderson Scott came to my house—he is my uncle—and he told me he had been ordered at camp. He had some provisions in a blanket.

Q. (By Mr. Smith). Are you speaking of what Scott said to you? A. Yes, sir.

The CHIEF JUSTICE. You may pass over that.

The WITNESS. He came to my house with provisions and a knapsack and went over to the Shops—he went in that direciion and was gone about two hours and came back to me and remarked——

Mr. SMITH. Never mind that.

Mr. GRAHAM. We claim, Mr. Chief Justice, that this is a part of the *res gestæ*. We expect to prove that upon the re qusition of Henderson Scott, the witness sent some money to Burgen.

The CHIEF JUSTICE. You can prove that.

The WITNESS. About two hours after he came back and told me he had no money with him.

Mr. SMITH. Does the Chief Justice think that is proper.

The CHIEF JUSTICE. Upon the theory that they will connect the fact that the witness took money from Henderson Scott and carried it to Burgen, it is proper.

Mr. MERRIMON. No, sir, we propese to show that the witness loaned Henderson Scott some money, and put it in an envelope and sent it to Burgen and that Burgen received it.

The CHIEF JUSTICE. That is competent connected with the fact of the loaning of the money.

The WITNESS. He said he had no money with him and that he wanted fifty dollars. I told him he could have it. He then told me what he wanted with it. He was sitting in my parlor. I stepped over to the store and got fifty dollars and brought it to him with an envelope. He sealed it up in the envelope and directed me to back it for Colonel Burgen. I did so and sent it.

Q. What did he say he we wanted with it.

Mr. SMITH. We object to that.

The CHIEF JUSTICE. I think that is a part of the act of the borrowing of the money.

Mr. SMITH. The borrowing of the money is competent; that is a fact, but for what purpose he intended to borrow it, depends entirely upon the declaration of Henderson Scott.

Mr. MERRIMON. It is an act accompanied by a declaration.

The CHIEF JUSTICE. It is necessary to explain the matter.

Q. What did he say he wanted it for? A. He said he wanted it for Colonel Burgen—that Burgen had told him he

would parole him and never interrupt him any more if he would pay him fifty dollars.

Mr. SMITH. I would ask the Chief Justice if that is competent even under the ruling which he has made.

The CHIEF JUSTICE. I think it comes in as a part of the act of borrowing the money.

Q. You sealed the money up? A. He sealed the money up. I saw the money put in.

Q. Did you address it? A. I addressed it myself.

Q. To whom? A. To this man Burgen and I maked Henderson Scott's name on the back as from Henderson Scott.

Q. From Henderson Scott? A. Yes, sir, and I sent it up by one of my clerks.

Q. Did you deposit that envelope in his hand? A. I don't know whether I gave it to the clerk or whether he did himself; if I did not hand it to him Henderson Scott did.

Q. Do you know the young man who got it? A. Yes, sir.

Q. What is his name? A. Robert S. Hunter.

Q. Was he in your employ at that time. A. Yes, sir.

Q. What was his business? A. He was a salesman in my store.

Q. Is he in your employment now? A. Yes, sir.

Q. What became of the young man after the paper was given him? A. He went off to the Shops.

Q. In that direction? A. Yes, sir.

Q. [By the CHIEF JUSTICE.] He went off and was absent? A. Yes, sir, he went off, as if he were going there.

Q. State to the court whether you saw these troops in the building at the court house at Graham? A. Yes, sir, they occupied the court house.

Q. How long? A. I can't say exactly how long they were there, but I reckon two weeks. I did not pay much attention to the time.

Q. Were they in the court house and about it? A. Yes, sir, they encamped there and they occupied the court house and offices, I think.

Q. They had armed possession of it? A. They had a guard around the court house, because on one or two occasions I at-attempted to go in and I could not go in.

Q. Did they have any prisoners in it? A. Yes, sir.

Q. How long were they kept in prison? A. I don't know exactly, but my recollection is about three weeks. I did not keep the time, but it was about three weeks altogether.

Q. What was done with you? A. I was paroled, as they call it.

Q. Allowed to go at large? A. I was allowed to go home but to go no where else.

Q. Under an injunction to do what? A. Not to talk but to go to my store and my house and remain there. I was afterwards carried before Judge Brooks at Salisbury.

Q. What did he do with you? A. He discharged me.

Q. Discharged you all from custody? A. Yes, sir.

Q. Were you ever prosecuted for any offence? A. No, sir.

Q. Had you committed any? A. None in the world.

Q. State to the court whether you have a general acquaintance with the people of Alamance county? A. I have been raised among them.

Q. What has been your business? A. I was a railroad man ten years doing business and connected with the people in that way. Before that I was for a while a salesman in the store of my father up to the time I went on the railroad. Since 1866 I have been merchandizing myself, with a partner.

Q. Have you a pretty general acquaintance with the people? A. Yes, sir.

Q. Do you know the black people there much? A. I have some acquaintance among them.

Q. State if you know the feeling in 1869 and 1870 and even up to this time existing between the whites and blacks in your country? A. So far as I know, in passing to and from my store and about town, the feeling seemed to be a kindly one between the two races.

Q. Do you know of any other feeling? A. No, sir.

Q. Do you know that any colored man or woman was dismissed by reason of his color or politics? A. No, sir, I have never heard of anything of the kind.

Q. Do you know whether the people there were submissive to legal authority? I think they were.

Q. Did you ever know an instance where legal authority was resisted? A. I never did.

Q. Are the courts kept open or otherwise? A. Always kept open.

Q. You live in the town? A. Yes, sir.

Q. People came and went as usual? A. Yes, sir.

Q. Were the black people generally employed by the whites? A. Yes, sir.

Q. They depended on the whites for labor and employment? A. I think so, and as far as my acquaintance is concerned, they were employed by the whites. There were some few renters and some few blacks who were mechanics and got employment about town.

Cross-Examination.

By Mr. Smith.

Q. Was any reason assigned to you when you were arrested for the arrest? A. No, sir, though I asked for it.

Q. Was anything said to you about information being lodged against you? A. No, sir.

Q. Where do you reside? A. In Graham, Alamance county.

Q. If I understand you, there was no act of unnecessary violence beyond the arrest and custody of the parties by any one upon any of the prisoners; that the only harsh treatment was the harsh language used and the confinement? A. That is what I speak of. The treatment I considered to be pretty rough on account of the language used, and the intimations thrown out of course left us in doubt whether we would be carried to execution. We could not tell anything about what was to be done with us.

Q. Do you know where these soldiers were from whom you

saw—where their homes were? A. Only what few I talked with. I think a majority of them whom I talked with represented themselves as being from Tennessee.

Q. Were they not from the western part of the state? A. Some few spoke of being from the western part of the state.

Q. Any from the county of Buncombe, where my friend Judge Merrimon formerly resided? A. I don't recollect any of them speaking of having come from Buncombe. I know that Yancey county and Mitchell county were spoken of.

Q. There were some from that section of the state and Tennessee? A. Yes, sir.

Q. Were there not a good many from Wilkes? A. I don't remember talking with any one who said he was from Wilkes.

Q. Don't you remember there were some who said they were from Madison county? A. I do remember that there were some who said they were from Madison.

Q. Were not the bulk of them from this county? A. Not the bulk of those I talked with.

Q. Where were they from? A. They said they were from Tennessee—the bulk that I talked with. I didn't talk with a great many.

Q. What officer was in command of the company? A. I do not remember. These were guards. I talked with men who were on guard duty and would go out with us occasionally.

Q. How many were there in the company? A. I don't know that.

Q. When they arrested you? A. They looked to me—I did not count them—but I suppose there were thirty or forty men. I did not know who was in command of the men although I walked with him.

Q. I believe you said that Kirk told you that he had information that they were going to be attacked and if they were you would all be shot. What was the information which he had received? A. He just remarked that he had received information—whether he had received it while we were stop-

ping there, I didn't know—"That your d—d Ku-Klux rebel "friends are going to attack my company to rescue you."

Q. Did he tell you that some of his men had been disarmed at a bridge? A. I didn't hear anything of that sort.

Q. All you remember is that he said be had understood you were to be rescued and his company were to be attacked to accomplish it? A. Yes sir.

Q. And if that took place you would be all shot.? A. He said "If there is a gun fired by your d—d Ku-Klux rebel friends I will shoot you all down."

Q. But there was no attempt to shoot you? A. No, sir, not that I know of.

Q. This language merely was used? A. This was repeated by both him and Burgen. Both entered into the conversation.

Q. There was no attack—no gun fired at you in execution of that threat? A. No, sir.

Q. Were you treated kindly at Caswell? A. We were treated by the citizens very kindly. I lived as well there as I ever did in my life. I don't think I ever lived better. With the exception of the rough language I cannot say there was any rough treatment of the prisoners while I was in the court house.

Q. You were subsequently discharged, or released on parol? A. Yes, sir, after having been there for sometime. I don't recollect how long.

Q. Do you know whether Burgen was put under arrest for his conduct towards you or any one else, by order of the governor? A. Not of my own knowledge.

Q. From what you heard said either at the time you have spoken of for his treatment of prisoners, or for any misconduct? A. Not at the time I have spoken of. I heard of it afterwards.

Q. Did you see any of them put under arrest? A. Any of the men?

Q. Or any of the officers? A. No, sir.

Q. Did you see any of them after they were arrested—any of these officers? A. I think not.

Q. Do you know that Burgen came to Raleigh soon after this? A. I saw him in Raleigh, I think, the next week after we were released at Salisbury. I was released there, it strikes me, on Thursday.

Q. [By Mr. Merrimon.] What day of the month—what time in the month? A. I do not recollect the date.

Q. When you saw him in Raleigh was he under arrest? A. Not when I saw him.

Q. Where was he? A. I saw him at the National hotel.

Q. He was not in charge of anybody? A. No, sir, I only know from hearsay that he was arrested.

Mr. GRAHAM. You need not speak anything of what you heard.

Q. Was your Uncle Henderson Scott released by orders of the governor, or by whose order? A. I heard Kirk say that he was released by order of the governor.

Q. He was released by order of the governor? A. Yes, sir. That declaration was made at Yanceyville.

Q. He was in fact released? A. Yes, sir, he was sent away from there then.

Q. Do you know whether he was not arrested a second time and released a second time by order of the governor—I mean arrested without the governor's order and released a second time by his orders? A. I do not know that.

Q. Do you know whether Thomas M. Holt was also released by order of the governor? A. I don't know of my own knowledge.

Q. Did you hear it stated at the time?

Mr. GRAHAM. I object to that.

Mr. SMITH. You have gone into that yourself.

A. I did not see him when he went from the camp. I only heard his own declaration after I got home.

Q. Did you hear Kirk at the time you have testified, or Burgen say how he was released? A. How Thomas Holt was released?

Q. Yes, sir. A. No, sir.

Q. Were you and Mr. Holt in the office of the governor after you were released? A. I think we were.

Q. How long after? A. It was sometime the next week after my release—I don't remember what day.

Q. How were you treated by the governor when you were in his office.

Mr. GRAHAM. We object to that, it is of no consequence.

The CHIEF JUSTICE. The question is not competent if it is objected to.

Mr. SMITH. The whole of this examination has been made to prove harsh or ill treatment on the part of the governor or his agents. We have not asked for any declaration but we have asked the treatment he received from the governor when he was in his office. It seems to me the whole inquiry is as to what was the *animus*.

Mr. GRAHAM. The witness was then out of custody.

The CHIEF JUSTICE. The presiding officer takes it for granted that the governor treats every citizen who calls upon him politely.

Q. I understand you to say that these soldiers were below the average of men in intelligence and moral conduct, or do you mean that they behaved as soldiers generally behave? A. I looked upon them as being below the average of men in the way of intelligence.

Q. How do they compare with soldiers generally? A. I am only able to carry a comparison with the federal soldiers who were there. The behavior and discipline of the two were not at all alike.

Q. Those soldiers you speak of were a part of the regular army of the United States? A. Yes, sir.

Q. Do you know how the conduct of these soldiers under Kirk's command would compare with that of volunteer soldiers generally? A. I do not know how volunteer soldiers behave. I know nothing about the volunteer armies of the country.

Q. Do you recollect when Outlaw was killed? A. I don't remember the date, but I know he was hung.

Q. Did you see his body the next morning? A. Yes, sir.

Q. Hanging from a tree? A. Yes, sir.

Q. When did that take place—what time of the night? A. I don't know that. I was awakened up the next morning by my family.

Q. You did not hear any disturbances in the night? A. No, sir, I heard nothing of it.

Q. Was there any firing of guns that night that you heard? A. None that I heard.

Q. How far was the place where he lived from where you resided? A. Not a great ways; I cannot tell, I might say it was four or five hundred yards.

Q. How far from your house was it where he was hung? A. About the same distance.

Q. How far apart were the two places—his residence and the tree where he was hung? A. It might be called a short eighth of a mile. I don't know exactly the distance.

Q. You heard no disturbances that night? A. No, sir.

Q. You did not know of any disorder going on in town? A. I did not know anything about it.

Q. Until the next morning? A. No, sir.

Q. What was the behavior and conduct of Outlaw? A. I never heard anything against the nigger in my life.

Q. Was he well behaved and peacable and respectable? A. So far as I know.

Q. You never heard aught against him? A. No sir.

Q. You stated a little while ago, in answer to a question by Judge Merrimon that the people were submissive to legal authority. Do you mean to include the hanging of Outlaw as among the acts of submission to legal authority? A. I mean that the people whenever there was any legal precept to be served were submissive.

Q. You mean they did not resist a process? A. No, sir, they did not.

Q. You did not mean to say that the people observed the law and that there were not acts of violence? A. I don't mean

Q. Were you and Mr. Holt in the office of the governor after you were released? A. I think we were.

Q. How long after? A. It was sometime the next week after my release—I don't remember what day.

Q. How were you treated by the governor when you were in his office.

Mr. GRAHAM. We object to that, it is of no consequence.

The CHIEF JUSTICE. The question is not competent if it is objected to.

Mr. SMITH. The whole of this examination has been made to prove harsh or ill treatment on the part of the governor or his agents. We have not asked for any declaration but we have asked the treatment he received from the governor when he was in his office. It seems to me the whole inquiry is as to what was the *animus*.

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Q. You did not mean to say that the people observed the law and that there were not acts of violence? A. I don't mean

to say that there were not murders and outrages in our county as much so as there are in other counties.

Q. There were murders and outrages in that county? A. Yes, sir.

Q. And you did not have reference to this when you spoke of the people being submissive to the law? A. No, sir, I don't suppose the law had any thing to do with them. It was an outrage.

Q. Somebody had something to do with it? A. Yes, sir.

Q. Do you know anything about the drowning of Puryear—the colored man? A. I only know from hearsay.

Q. Has anybody been arrested, tried and punished for any of these offenses? A. Not that I know of.

Q. Nobody has ever been arrested, tried or punished for either of these homicides that you ever heard of? A. Not to my knowledge.

Q. Do you know a man named Corliss? A. No, sir.

Q. Did you know a man whipped by that name—a northern man? A. I heard of it.

Q. You knew the man? A. No, sir, I never saw him that I know of.

Q. Do you know a man named Meader, a northern man who resided there? A. No, sir, I don't know him. If I ever saw him, I did not know it.

Q. Do you know anything about these secret organizations to execute vengeance or violate the laws? A. I do not.

Q. You know of no secret organizations of any kind in that county? A. Not of my own knowledge.

Q. Have you never seen disguised persons going about? A. Never in my life.

Q. Did you notice the next morning when Outlaw was found hung whether there were any marks or tracks of horses showing that a considerable crowd had been on the spot? A. I think I noticed tracks of horses.

Q. A good many of them? A. I could not tell; a good many had been there afoot before I got there.

Q. And defaced the tracks? A. Yes, sir.

Q. Were there not tracks all about the streets of horses hoofs—fresh tracks? A. I cannot tell as to that, I did not notice. It was rainy next morning and the streets were wet?

Q. Do you know of any company of disguised men or other men going through there sometime before this night making a row and shooting? A. Not of my own knowledge. I was not home at that time.

Q. You were not at home then? A. I was not in the state. I heard of it after I came home.

Q. Did you notice the house of Outlaw after he was hung, whether it had been fired into and whether there were marks of shots? A. No, sir, I don't remember that I was ever at his house afterwards.

Q. Do you co-operate with the conservatives or with what party? A. I have been voting with the conservative party.

Q. I am not asking you with a view of reflecting on your acts—it might perhaps reflect upon myself? A. I am not ashamed of my politics.

Q. Did you know Shoffner? A. I knew him when I saw him. I have seen him a few times in my life.

Q. Did he reside any where near you? A. I don't know how far, but it was some ten or twelve miles distant.

Q. Do you know how he come to leave the state? A. No, sir, only from hearsay.

Q. Do you know of any threats being made against him? A. No, sir.

Q. Do you know of any attempt to take his life or mob him? A. Only from hearsay.

Q. Do you know whether he went secretly or publicly? A. I don't know of my own knowledge. I can only state what I heard.

Mr. GRAHAM. Do not state anything you heard.

Q. You don't know how suddenly he disappeared? A. No, sir.

Q. He has gone away from there? A. I understood he had gone away sometime before I heard of it.

Q. He has not been there since? A. Not that I heard.

Re-Direct-Examination.

By Mr. MERRIMON.

Q. I understood you to state on your examination in chief, that Burgen said he had been ordered to arrest Henderson Scott a second time? A. That is what he stated to me.

Q. I wish to ask you another question about what Henderson Scott said to you at the time he borrowed some money.

Mr. BOYDEN. We have not cross-examined about borrowing money at all.

Mr. MERRIMON. I ask that we may be permitted to put the question.

The CHIEF JUSTICE. If it is objected you cannot go into that matter.

Q. If you know, state whether there was an inquest held over the body of Outlaw.

Mr. BOYDEN. That is new matter. We did not go into that question on the cross-examination.

The CHIEF JUSTICE. That is rebutting your new matter.

A. There was.

Q. Was a jury empanneled by the coroner? A. Yes, sir.

Q. Were you present at the inquest? A. I was not present.

Q. Did you have any personal knowledge that the coroner was there and a jury assembled? A. I saw them together in the room where the body was lying.

Q. You do not know anything about the examination? A. No, sir.

Q. You know they were there taking action? A. Yes, sir.

Q. As to Shoffner—was he a prominent person in the county—a man of political influence or otherwise? A. Not that I ever heard of.

Q. Was he an obscure man? A. I never knew anything about the man. If he had been a prominent man I should have heard of it. He was a man who lived in an extreme

corner of the county; and as to any prominence in the way of politics I never heard it alleged of him.

Q. If there was any ill feeliug against him in the county you will say so if you know, and if there was any cause that raised that ill feeling, you will also state it. A. I cannot say that I ever heard any ill feeling expressed towards him as a man. There was some feeling in relation to a bill which he introduced in the legislature, known as the Shoffner bill. There was some indignation felt about that bill.

Q. That was a bill offensive to the community? A. Yes, sir, I heard complaints made in regard to that bill, but I never heard anything else alleged against him.

ROBERT S. HUNTER, *a witness called on behalf of the Managers, being duly sworn, testified as follows:*

By Mr. MERRIMON.

Q. What is your name, residence and age? A. Robert S. Hunter—Graham—age eighteen years.

Q. What is your business? A. I am a salesman.

Q. State whether at any time Mr. James S. Scott placed in your hands an envelope containing something, and if so, what did you do with it? A. I never received any from him.

Q. From whom did you get it? A. I received one from Mr. Henderson Scott and I carried it to Mr. Burgen—called Col. Burgen.

Q. Where was that? A. At the time he was at Company Shops.

Q. Was it last summer? A. Yes, sir

Q. Do you know whether Henderson Scott had been arrested? A. He had been once.

Q. Was that about that time or after that? A. After he had been released once.

Q. What did you do with the paper you received from Henderson Scott? A. I carried it to Burgen.

Q. What did he say? A. He said it was all right.

Q. He received it? A. Yes, sir.

Q. What was on the back of the letter? A. It was directed Col. George W. Kirk, I believe.

Q. Kirk or Burgen? A. Burgen.

Q. Address to Burgen? A. Yes sir.

Q. Do you know whether Scott's name was written on the back of it? A. I didn't notice particularly.

Q. You delivered it to Burgen and he said it was all right? A. Yes, sir.

Cross-Examination.

By Mr. BOYDEN.

Q. Where do you reside? A. Graham, Alamance county.

Q, Were you there when Outlaw was hanged? A. Yes, sir.

Q. Where were you that night? A. I was standing down at Shaw's hotel.

Q. What time did you retire that night? A. I don't recollect exactly what time it was, but I suppose it was betwixt nine and ten o'clock.

Q. Did you go to sleep directly? A. Yes, sir.

Q. What time did you get up in the morning? A. I suppose about sun-up.

Q. Did you hear any noise in the town during that night? A. No, sir.

Q. Did you hear any guns fired? A. Yes, sir.

Q. What signs did you see in the morning of there having been a large number of men on horseback—horses' tracks—there? A. I could not see any tracks that morning, it was sort of rainy.

Q. But you could tell if it was rainy whether there had been any? A. There had been a few—there was a few tracks.

Q. Didn't it look as if there had been fifty at least? A. It looked as if there might have been about as many.

Q. What time did you see the body. A. Just as I got up.

Q. How far from where you slept? A. I suppose about a hundred yards.

Q. Which side of the house from where you were? A. The front side—the south side.

Q. The south side of the house? A. Yes, sir.

Q. And about one hundred yards from him? A. Yes, sir.

Q. You say you heard no noise that night? A. No, sir, I never heard any.

Q. Were there any guns fired—any disturbances of any kind? A. No, sir.

Q. State if you ever saw a crowd there at any time previous to that riding through the town? A. I did once before.

Q. Tell when that was? A. I don't know what time it was now.

Q. I do not care about the particular time? A. I suppose about twelve months before.

Q. Tell how many there were? A. I cannot tell.

Q. I don't mean exactly just how many, but give an estimate? A. I suppose thirty or forty.

Q. Were they on horseback? A. A part of them were.

Q. What time of day was it? A. I suppose it was betwixt ten and eleven at night.

Q. What sort of disguises did they have? A. They were dressed in White.

Q. Did they have points indicating horns from the head? A. I believe they had.

Q. Did you go out when they rode through there? A. Yes, Sir, I came out.

Q. You went out among them? A. No, sir, I did not go where they were. I was twenty-five yards from them.

Q. What did they do? A. They never did anything, but passed through.

Q. Did they make any noise? A. Not when they passed.

Q. You didn't hear any noise made by any of them? A. Not there.

Q. Anywhere? A. After they got up street they commenced groaning and hallooing.

Q. You think there might have been how many? A. Between thirty and forty.

Q. Don't you think there were fifty or sixty? A. No, sir, I don't think there could have been so many.

Q. How long did they continue in the town? A. I suppose some hour and a half.

Q. Did they ride about town a good deal—different parts of it? A. No, sir, they just passed on through.

Q. Which way did they seem to be going? A. They went north—out north street.

Q. In the direction towards Salisbury? A. No, sir, towards Caswell.

Q. Did you know any of the men? A. No, sir.

Q. Did you know any of the horses? A. No. sir.

Q. Were the horses disguised too? A. Yes, sir.

Q. What sort of disguises did the horses have? A. They had the same kind.

Q. White? A. Yes, sir.

Q. Disguised so that they could not be told at all? A. Yes, sir.

Q. Did you hear any of them talk when they were near by you? A. No, sir.

Q. Did you know Puryear who was drowned? A. Yes, sir, I have seen him.

Q. Did you see his body after he was drowned? A. No, sir.

Q. Do you know of any person that was whipped in the county? A. No, sir.

Q. Did you see any who had been whipped? A. No, sir.

Q. Did you know Corliss? A. No, sir.

Q. Do you know of any secret political organizations in the county of Alamance? A. No, sir.

Q. I ask you if you do not belong to the Kuklux Klan? A. No, sir, I do not.

Q. Do you know anybody who does? A. No, sir.

Q. You say you do not know of anybody that was whipped whipped? A. No, sir, I have heard of some being but I don't know it to be so.

Q. Which party do you co-operate with? A. None.

Q. I do not ask you about voting, but I ssk which your sympathies are with? A. The conservative.

Q. I suppose so? Of course.

Q. What did you mean by stating that you did not cooperate with any party? A. I thought you wanted to know what party I voted with.

Q. Did you see Outlaw's body hanging? A. Yes, sir, the next morning.

Q. As soon as you got up? A. Yes, sir.

Q. Did you ever see any parties disguised at any other time than that one? A. No, sir.

THOMAS M. HOLT, *a witness called on behalf of the Managers, being duly sworn, testified as follows:*

By Mr. MERRIMON.

Q. What is your name, place of residence and business? A. Thomas M. Holt. I reside in Alamance county at Haw River, two miles east of the court house, and manufacturing is my occupation for a living.

Q. State to the court whether or not you saw any armed men in the county of Alamance during the year 1870, and if so, about what time you saw them, and what you know of their actions. A. They came about the 1st July.

Q. Who? A. Colonel Kirk's command it was called. I saw them as I passed on the railroad. On the 15th July they came to my house and arrested Mr. Moore.

Q. State all you know about that arrest? A. It was on my birthday, and I had a little party that day, and several of my friends were there. Colonel Burgen came with forty odd men. My father counted them, and said there were forty-three. Before we knew anything about it the house was surrounded. It is on a hill with ravines around, and they came up on all sides. Some twenty of them came in front with guns drawn. My father and Henry Freeze and myself were sitting on the piazza. My father said they need not be in a hurry to shoot, that nobody would run. They had their guns drawn on me.

They came up and Burgen asked me my name. I told him. He asked if Mr. Moorewas there, and he said I was.

Q. Who is Mr. Moore? A. He is my brother-in-law, A. G. Moore. I went in and called him out. Burgen met him at the door, and told him he was his prisoner. He asked him by what authority; he said it would not be given him, that it was by orders of the governor and the president of the United States. After that the men came running towards the house and Burgen ordered them back. They came around and got off the walks on the turf, and he ordered them back and made the remark that they were green troops and that he could not keep them orderly.

Q. Were your family present and alarmed? A. Yes, sir, there were several ladies there.

Q. Were they alarmed?

Mr. BOYDEN. That question is leading.

Q. State whether they were alarmed or otherwise? A. The children and ladies were of course alarmed, but the gentlemen were not scared.

Q. What happened then? A. They took Mr. Moore off in front about fifty or seventy-five yards, and after a while he came back and told me that if I wanted to I might take my buggy to convey Mr. Moore up to the camp. I ordered the horse and buggy up, and Mr. Moore and I got in, with a guard before and behind, and we went in that condition to the Shops. Mr. Moore went into the camp, but they would not let me go in. What happened there I do not know. I went from there to the railroad office, and then I came back to the camp and asked Burgen if he would allow bail for these men, that we could give any amount of bail, but he said bail would not be allowed.

Q. State whether you saw troops there, and if you did, what was their character, and what their behavior was and anything else? A. I didn't see much of them. I only saw them in camp as guards around these prisoners.

Q. State if you saw anything of them afterwards? A. I

had a good deal of conversation at different times. They were men of very ordinary intellect and very ignorant. They were pretty rough.

Q. What was their discipline so far as you observed? A. The discipline I should say was bad.

Q. What was their action towards their officers? A. But for the dress you could hardly tell who were the officers.

Q. Were they orderly or disorderly? A. They were disorderly.

Q. Much so, or otherwise? A. For soldiers I should call them very disorderly.

Q. Did they look like an army or a mob? A. They were uniformed like an army but their actions were more like a mob.

Mr. BOYDEN. We object to the answer.

The CHIEF JUSTICE. Tell what their actions were.

A. They seemed to go where they chose, and there was generally no order, from what little I know of military discipline.

Q. What became of them? A. The chief portion went to Yanceyville. They left a company there. I knew little about them until they arrested me. They came to my house one day when I was at my office on the opposite side of the river. There was a gentleman from New York at the time with me, and I said I expected when I saw them that they wanted me, that they were arresting everybody. I locked my safe and went over, and as I got to the river, they had men at the bridge to prevent me from passing. There was about a dozen or fifteen marching with a negro.

Q. Who was the negro? A. I do not know. He was one of the Ruffins. He asked me what my name was; I told him. He said he had orders for me to report at 7 o'clock the next morning, under arrest. I told him that 7 o'clock was a little early, and I asked him if it would not do later. I said I could get there by eight without any trouble; he said "come at eight "o'clock, and it will be all right." I told him that I would come up. The next morning I reported to Burgen five minutes

before the time. He didn't seem to know me, although I had seen him on several occasions, and he asked me what my name was. I told him; he said "Oh! yes, I have an order to "carry you to Yanceyville." He said, "Are you ready?" I asked him what time he wanted me; he said whenever it would suit me. I told him it would not suit me to go at all; but I must do whatever he wanted me. He said bring your buggy up to-morrow, at 9 o'clock, that he was going over, and that we would go together. My buggy was then at the railroad, and the boy who carried me up waited to see what would become of me. I told him to remain at the railroad office until I sent him word to return. I asked Burgen if that was all he wanted, and he said that was all he wanted that day. I then went to the railroad office, and told the president that I was arrested, and I had got to go to Yanceyville the next day. He said "If I can do anything for you I will do it." That was the president—Major Smith. I told him I didn't know of any thing he could do, that I had orders to report the next morning to go to Yanceyville. We started out and met Burgen at the door, and after a few minutes consultation between them, they came into the office and he said "Major Smith tells me you "are a gentleman, and that you have nothing to do with this "Kuklux business, and though it is contrary to orders, I will "release you."

Q. You were released? A. Yes, sir.

Q. You did not go to Caswell? A. No, sir.

Q. Do you know when the persons arrested were brought back from Caswell—arrived at Company Shops? A. Yes, sir.

Q. When was it? A. I think it was in August.

Q. What was the condition of the weather the day they returned? A. Very inclement.

Q. Describe it? A. It was a very rainy, wet day.

Q. Cold? A. Not very cold, it was in the summer time.

Q. What was done with the prisoners that night? A. I don't know. I went home before any of them came. I went on Monday morning and carried some provisions and I re-

mained during the day; I understand they went to Graham—I saw them there the next morning.

Q. Do you know whether any people wanted to put them in the church? A. So said, I didn't hear it.

Q. When they got back to Graham where were the prisoners put? A. In the court.

Q. State whether the court house was occupied and surrounded by troops? A. Yes, sir.

Q. The prisoners were crowded in there? A. Yes, sir.

Q. Do you know whether any persons were arrested and put in jail? A. It was so said, I don't know it.

Q. State whether you are acquainted with the people in Alamance, black and white? A. Yes, sir.

Q. Have you an extensive acquaintance with the black people? A. I think I have.

Q. State whether or not you have in your employ blacks, and if you have had, for how long a time? A. I had thirty in my employment last year during that time.

Q. Do you know the relations existing between the white and black people? A. They are friendly so far as I know.

Q. Do you know of any colored persons being dismissed from employment for exercising their political privileges or having their political notions? A. Not that I know of.

Q. Did you ever take a course of that sort? A. No, sir, I never did.

Q. Do you know whether there was any resistance to the lawful authority there? A. None that I ever heard of.

Q. You don't know of any resistance? A. None at all.

Q. Do you know whether the courts were regularly held? A. Yes, sir.

Q. What was the business of the colored people you employed? A. Some of them were working about the mills and factory, some as draymen, and I had twenty-five or thirty, more or less, in the brick yard and doing odd jobs about—cleaning out the canal.

Q. I understood you did an extensive business with blacks and whites? A. Yes, sir.

Q. And you don't know any difference between them? A. No, sir.

Q. There was a good feeling? A. A good feeling as far as I know.

Q. State to the court whether you knew Mr. Shoffner? A. I did.

Q. Who was he? A. He was raised within three miles of me, I suppose. I never heard anything against him as a man.

Q. What was his business? A. He was a blacksmith.

Q. State whether he had any prominence as a politician—whether he was a political leader? A. He had no prominence that I ever heard of until he was nominated for the senate.

Q. Was there any prejudice against him. A. None at all developed.

Q. State whether he was liked rather than otherwise? A. During the first year of the legislature he was liked.

Q. On what account? A. The votes he gave on railroad measures caused the people to rather approve his course and it was remarked that he did well considering his chances and his intelligence. After the introduction of the Shoffner bill the people were indignant.

Q. Was that bill very offensive? A. Yes, sir.

Q. Did he become unpopular after the introduction of that bill? A. Yes, sir.

Q. The people were indignant about it? A. Yes, sir.

Q. But he had no political notoriety or prominence except what grew out of that bill? A. No, sir.

Q. Was he an humble person rather than otherwise.

Mr. SMITH. That is a leading question.

A. Yes, sir.

Cross-Examination.

By Mr. BOYDEN.

Q. How far do you live from Graham? A. I live about two miles east.

Q. Did you see Outlaw after he was hung? A. No, sir, I did not.

Q. You didn't go up to the court house? A. No, sir, I never heard of it until the next day about twelve o'clock.

Q. Do you know how you happened to be released—whether Governor Holden had given any orders? A. No, sir, I don't know anything of my own knowledge.

Q. What was said to you, if anything, when you were released? A. Burgen told me that he had released me on his own authority.

Q. Was anything said about Governor Holden's having given orders? A. Burgen said it was contrary to his orders, but that he would release me on his own authority.

Q. He was not the head man—I mean Kirk was the man in command? A. Yes, sir, he was the colonel.

Q. Burgen said it was contrary to orders for him to release you, but he would do it? A. That Major Smith had told him that I was a gentleman, and that he would not interfere with me, but would release me on his own responsibility.

Q. Do you know anything of persons who were chastised and whipped—colored people? A. I have heard of some, I never knew of any of my own knowledge.

Q. I heard there was one whipped at your factory? You know nothing about it? A. A man whipped at my factory?

Q. A man working there, or who had been in your employment? A. I never heard of it before.

Q. You never saw one that was whipped? A. Not that I know of.

Q. You never saw the marks of the whipping? A. No, sir.

Q. Do you know anything about these secret orgaizations in that county? A. Nothing in the world.

Q. Did you ever see any men disguised? A. Never in my life.

Q. Do you know of any secret political organizations? A. None at all only from rumor. I have heard of the Kuklux Klan, but I don't know anything about it.

Q. You never saw any of them disguised, and were never in any camp? A. No, sir.

Q. You know nothing about any judgments that were passed upon anybody? A. No, sir, nothing at all.

Q. With which party do you co-operate? A. The Conservative.

Q. You think the state of feeling is very good between the colored people and the whites? A. I have heard nothing to the contrary.

Q. Have you not heard of a great many chastisements of colored men? A. I believe I have heard of one.

Q. Is that all? A. That is all I recollect at present—that is I understand you, colored persons who have been whipped?

Q. Or maltreated in any other way? A. Outlaw was hung and that other nigger, said to be crazy—I never knew him—who was drowned. And then Caswell Holt was whipped.

Q. [By Mr. Graham.] That is by hearsay? A. By hearsay.

Mr. GRAHAM. We shall object to any evidence of that nature.

Q. Don't you think that is some evidence of bad feeling? A. It was said that Caswell Holt was whipped for stealing. My father raised him. He was a very bad nigger.

Q. Is there bad feeling? A. I cannot say there is any bad feeling. That is the only case of whipping that I have heard of or that can recollect at present. I have a great many niggers about me and they all respect me. I have had considerable to do with them.

Q. You never heard of anything against Mr. Shoffner. A. No, sir.

Q. He was a clever man? A. Yes, sir.

Q. You think that after he had been in the legislature during the first session they were very much pleased with him? A. Yes, sir, rather pleased with him than otherwise.

Q. But after he introduced that bill they became indignant against him? A. Yes, sir.

Q. There was a bitter feeling against him? A. They didn't like it.

Q. Don't you think that the feeling was bitter? A. Yes, sir, I think it was bitter.

Q. What time did he leave the county, do you know? A. I do not know. He was gone before I knew it. I never saw him at all after the adjournment of the legislature.

Q. You do not know whether he went off secretly or how? A. No, sir, I didn't know anything about it.

Q. Did you ever hear any threats made against him? A. No, sir.

CHESLEY MOORE, *a witness called on behalf of the Managers, being duly sworn, testified as follows:*

By MR. MERRIMON:

Q. State your name, age and business? A. My name is Chesley Moore, I am fifty-five years old and am a farmer.

Q. Where is your residence? A. Twelve miles south-east of Graham.

Q. What is the name of the township? A. Newlin's township.

Q. You know the people in that township? A. Pretty generally.

Q. Do you know anything of the black people? A. I know some. There are not a great many colored people there, and I believe I know the most of them.

Q. State if you know of any feeling existing between the blacks and the whites? A. I think the feeling is generally good.

Q. Friendly? A. Yes, sir. I know nothing else.

Q. I refer to the years 1869 and 1870? A. It has been so all the time since the war.

Q. State whether the white people have employed the colored people? A. Yes, sir, some croppers and some hired. They employ all they can get. They don't get as many as they want.

Q. State whether law is executed in your township? A. Yes, sir.

Q. Do you know of any resistence to authority there? A. None at all.

Q. Have you a general acquaintance in the county? A. I have a right smart acquaintance over the county.

Q. State the feeling through the county between whites and blacks? A. As far as I am acqainted it is good generally. I am pretty well acquainted all over the south and I am some in the north part.

Q. Have you ever seen the legal officers in the exercise of their authority about there? A. Yes, sir.

Q. Do you attend the courts? A. Yes, sir, regularly every court.

Q. Are the courts open? A. Yes, sir.

Q. Did you know Mr. Shoffner? A. Yes, sir, I knew him when I saw him.

Q. Did you have any acquaintance with him? A. No, sir, not very extensive. I was with him in the army about a month, once.

Q. Was he a man of any prominence there? A. No, sir, I don't think he was.

Q. Do you know what his business was? A. No, sir, I do not. I understood he was a blacksmith. I lived some distance from him—twelve or fourteen miles.

Q. Do you know anything about an armed movement in Graham last summer? A. Some little—not very much.

Q. State whether you saw squads of men about there in the country? A. Yes, sir, I saw them passing. They passed my house—armed men.

Q. What sort of men were they? A. I was not right close to them at the time—they were soldiers—had uniforms and guns. The neighbors' boys were passing after them—were with them—they had them arrested.

Q. Any negroes? A. No, sir, I didn't see any. My house

is a little off. There was a neighbor's boy or two passed. They did not stop at the house, but they just passed on.

Q. Did you see them arrive with guns at all? A. Yes, sir.

Q. Have you seen them in camp? A. Yes, sir, I saw them in camp at Graham.

Q. Describe your notion of them, what was their appearance, demeanor and discipline? A. Their appearance was rather bad. They looked to be of very low character to me.

Q. Orderly or disorderly? A. They were right smart disorderly.

Q. Did they seem to be insubordinate to those over them? A. I did not see them exercise any authority over them. They were running about town in stores and about the camp.

Cross-Examination.

By Mr. Boyden.

Q. You did not see them under command? A. Yes, sir, I saw them right at their camp.

Q. You spoke of them as being around at stores? A. I saw the whole bunch pretty much. The officers and all. I did not see them taking any command over them. They seemed to be going at large.

Q. You did not see them under word of command? A. Only on the calling of the roll.

Q. They answered as other men? A. They answered to their names.

Q. That was all that was required? A. It might have been at that time.

Q. You say they looked like men of low character? A. That was their appearance.

Q. Do you mean they were ignorant? A. They appeared to be ignorant men, what we consider low characters—trifling men.

Q. You judged they were trifling men because they were there as soldiers? A. I judged it from their natural appearance—they were very dirty. Some of them were without

shirts—some of them had no coats—they were passing about in that way.

Q. That was before they were in uniform? A. They had uniforms—some had them on.

Q. They were badly clad? A. I suppose they had clothes about somewhere.

Q. You did not know about their having clothes anywhere? A. Some of them were clothed well enough.

Q. You did not understand my question? A. I recollect one going about without any shirt, but he had a coat on.

Q. You did not know anything about their having clothes anywhere else? A. No, sir, I do not know that they had.

Q. How far do you live from Graham? A. Twelve miles.

Q. What part of the county? A. The south-eastern part.

Q. There is a general impression there that anybody who is a radical is rather low down?

Mr. GRAHAM. We object to that.

The CHIEF JUSTICE. I did not hear the question.

Q. My question is this: isn't it the general impression that any man belonging to the radical party where you live, is rather low down?

Mr. GRAHAM. We object to the question. To admit that class of questions would lead to interminable examinations.

Q. [By the Chief Justice]. Explain what you mean by low? A. I consider people low here in our country who have bad habits—men whom you cannot rely upon and have the appearance of that kind of men. These looked like men who had no character.

Q. But you know nothing about their character? A. Only their appearance.

Q. You judge their character by their clothes? A. No, sir, I judge by the countenances very often more than by their clothes.

Q. But it is the clothes you have given a particular account of. You judge, you say, by the countenances and from the clothes? A. I generally look at a man's countenance.

Q. You have been describing why you think these men are low, and you have said they were badly clothed? A. Not because they were badly clothed.

Q. What did you say about their being badly clad? A. I spoke about their dress. I think that a man ——

Q. But I thought it did not have any effect upon your opinion—their dress? A. I think that a man who had any respect for himself would not be fixed in that way.

Q. Then the dress did have some effect on your opinion? A. I think that men who had any respect would have fixed themselves a little better when they had an opportunity to do so.

Q. Men who had respect for themseves would have dressed better? A. They would have had on their clothes. I think they had some other clothes. A part had on all their uniforms and a part did not.

Q. Then you answer the question now that you do estimate a man's character by the way he dresses? A. Not altogether.

Q. I don't mean "altogether" but somewhat? A. I take the general appearance of a man.

Q. I ask you if you did not state just now whether your estimate of their character being low, was not in part formed by the dress which they had on? A. By the general appearance of the man.

Q. Confine yourself to the dress? A. I don't confine myself to the dress altogether.

Q. I am not talking to you about what you regard "altogether," I said in part.

Senator WORTH. I insist that the chief justice take take the witness into his own hands. It is a perfect outrage, I think, upon this court to allow such a course of proceeding as has been carried on for the last ten minutes. If I am wrong I will yield, but I think it the duty of the chief justice in such a case to take the examination into his own hands.

Mr. BOYDEN. I submit, Mr. Chief Justice, that these questions are competent. The witness is endeavoring to

speak of the character of people whom he knows nothing about and has spoken of their dress and appearance in connection with misjudgment of their character. I think I have a right to make the witness state precisely on what his opinion is formed—to say if he knows anything more about it. That is what I am trying to get out of him.

The CHIEF JUSTICE. The presiding officer has no right to control the manner of examination of witnesses so long as the counsel keeps within legal rules. That lays within the discretion of the counsel.

Q. I want you to state if your opinion was not formed, of their being low characters, by their dress and general appearance and whether really you did not know anything about their character? A. That is what I said, their general appearance. I know only from the general appearance of the men.

Q. That was what I was trying to get you to answer? A. The countenances of the men and the way they put on their clothes and every thing had gave them the appearance of indolent, low down characters to me.

Q. That is answering my question. Do you know any secret political organization in the county of Alamance? A. No, sir, I do not.

Q. Do you know of anybody's being whipped there? A. I do not.

Q. You have no personal knowledge? A. No, sir.

Q. Did you see any who had been whipped? A. No, sir, not of my knowledge.

Q. You have not seen any stripes on them? A. None.

Q. Have you seen any body going about disguised in the county of Alamance? A. Never in my life.

Q. Do you keep yourself confined at home pretty much after night? A. No, sir, I am travelling about a good deal after night.

Q. You never have met these disguised men? A. I never have.

Q. Did you ever see these disguises which they wore? A. No, sir, I never saw them.

Q. Did you ever see any of these disguises being made? A. No, sir, I never saw them in my life making or any where else.

Q. Have you heard of a great many chastizements in the county? A. No, sir, I have never of but a few.

Mr. MERRIMON. We object to this class of questions.

Q. What party do you co-operate with? A. I co-operate with the conservative party.

Q. Do you attend the court? A. Yes, sir, I believe I hardly ever missed one.

Q. Do you know whether there have ever been indictments presented for killing Outlaw and Puryear? A. Not that I know of. I don't know that there was any evidence given to justify a presentment.

Q. Have there been any steps taken that you are aware of to find out the murderers of those men? A. I don't know.

Q. Have you been on the grand jury? A. I have not been on it since that time.

Q. Do you hold an office in the county? A. Not at present.

Q. When did you? A. I have not held any since the new constitution was ratified.

Q. Do you know that there was a considerable determination on the part of the people of Alamance not to permit the colored people to have their rights? A. Nothing of the kind there that I know of among the people.

Q. You know all about how it is there? A. I know right smart about a large scope of the country.

Q. You answered the question very broadly? A. I have a right broad acquaintance all over the there.

JAMES G. MOORE, *a witness called on behalf of the Managers, being duly sworn, testified as follows:*

By Mr. GRAHAM.

Q. Where do you live? A. Company Shops.

Q. What is your age? A. Forty.

Q. What is your business? A. Merchandizing at Company Shops.

Q. Were you living there at the time this man Corliss was there? A. Yes, sir.

Q. Do you know whether Corliss sued out a warrant and brought persons before the justice of the peace on charge of having whipped him? A. I do.

Q. Were you present at that trial? A. Yes, sir.

Q. Who was the magistrate? A. Mr. William D. Faucett.

Q. Is he a conservative or a republican in his political connection? A. He is understood as acting with the republican party.

Q. Elected by them as their candidate in the district? A. I can't say that he was elected entirely by them.

Q. Corliss made an application and obtained a warrant against certain persons whom he charged with having committed this outrage upon him? A. Yes, sir.

Q. Were witnesses examined before Mr. Faucett? A. Yes, sir.

Q. What disposition was made of the case? A. He discharged those who were arrested.

Q. Was the matter pretty fully discussed before him? A. Yes, sir.

Q. Did Corliss make a speech himself? A. Yes, sir.

Q. Mr. Faucett upon the testimony offered before him discharged these persons whom Corliss alleged had committed the outrage? A. Yes, sir.

Q. Were you foreman of the grand jury recently? A. I was foreman at the spring term, 1870.

Q. Your body then passed upon all the bills of indictments that the solicitor sent to you? A. As well as I remember.

Q. Did you institute an examination among the grand jury as to their knowledge or their information in reference to crimes in the county? A. Yes, sir, I called on all the members of the jury to know of anything that might have happened in their respective neighborhoods. I asked them one by one.

Q. Was your grand jury constituted of people of different politics? A. I suppose so—it was understood so by me.

Q. How many colored men were there upon it? A. Three.

Q. You say the grand jury was called upon by the foreman, each man to answer for himself, whether he had any information as to crimes, so as to bring up witnesses and have the matter examined? A. Yes, sir.

Q. Did these colored men, or any body else, allege they had any information as to the murder of Outlaw, or ask that witnesses be examined and sent for in regard to it? A. No, sir. I told them that it was impossible for a grand juror of one section to know what was going on at a distance, and taking it for granted they were selected from different parts of the county, each one must represent his own section. I gave them a day to think about it, and told them it mattered not what had happened, or who it was charged, it was our duty to give the names and we would present them and that would end our business as far as we were concerned.

Q. You announced this the day before hand, and told them that it would be brought up the next day? A. I cannot say it was just a day. But I gave notice that each one could think over the matter—that they could go home and think over it.

Q. Did any of the colored men or any other man on the grand jury profess to have any information in reference to the death of Outlaw, and ask witnesses to be sworn on that subject? A. No, sir. I called on Abraham Boyd, who was a colored man in Graham, and a very intelligent man, and told him that he must answer for Graham, that I would answer for Company Shops, and that the others around must do the same thing.

Q. Abraham Boyd was a colored man, was a member of the grand jury living in the town of Graham? A. Yes, sir, and Peter Ruffin, also a colored man, and a servant of Judge Ruffin, was another one.

Q. Peter was on the grand jury? A. Yes, sir.

Q. This was Peter Ruffin and not Aleck? A. Yes, sir.

Q. Peter did not become a soldier in the war? A. No, sir, not to my knowledge.

Q. You remember speaking to both these colored members of the grand jury, Peter Ruffin and Abraham Boyd? A. I don't know that I told Peter Ruffin, but I know I told Abraham Boyd, because he lived close by.

Q. Abraham made no motion on the subject, and did not communicate to the grand jury that he had any reason to suspect any person of the murder? A. I took them as they were sitting on the grand jury each one by one, and asked them if they had anything to present I would make a note of it.

Q. There was no motion made by any man to institute proceedings as to the death of Outlaw? A. No, sir.

Q. Mr. Bulla was the regular solicitor at the court? A. Yes, sir.

Q. He sent in a number of indictments of various kinds? A. He sent some, I don't now remember how many, but I remember one or two.

Q. You remember one against Allen Paisley and two other negroes? A. Yes, sir.

Q. They were charged with whipping Henderson Coble? A. Yes, sir.

Q. A true bill was found against them, and the case disposed of at that term? A. Yes, sir.

Q. Do you know in the case of another colored man where a bill was preferred against him for a capital crime and he was convicted? A. Yes, sir, Tarpley.

Q. He was convicted and executed? A. I heard he was executed—that is my impression.

Q. Your body found a true bill against him? A. Yes, sir.

Q. For this very heinous crime? A. Yes, sir.

Q. Do you know whether he was arrested in due course of law, and not by a mob? A. Yes, sir.

Q. That occurred in the neighborhood of Company Shops—this horrible crime? A. Yes, sir.

Q. How long before the court sat which tried him? A. I

do not remember, it may have been two months, it may have been three. I did not charge my memory with it.

Q. Was any violence done to him until he was regularly tried and executed according to law? A. No, sir. I think he had been tried before I heard of the crime. I mean by the magistrate.

Q. He was examined and committed by the magistrate?

Mr. BOYDEN. The witness does not know anything about that.

A. I do not know of my own knowledge.

Q. You told us about these investigations and proceedings in the grand jury. Was there any instance in which the grand jury, where there was sufficient evidence, failed to find a true bill, or make a presentment? A. I think, if anything, it was the other way. I think we put in too many. If we erred at all, we erred that way. My object was to put a stay to crime, and I thought it was the object of all the others.

Q. Did you see these soldiers that Kirk had at Graham while they were there, before going to Salisbury, and after they returned from Caswell? A. I do not know whether it was before. I saw them at Graham while they were encamped.

Q. Had they prisoners at the court house? A. Yes, sir—at least I think they had. I saw the guard. It was on Sunday.

Q. Describe to the court what was the behavior of these men—where did they encamp? A. Their camp was east of the jail and south of Mr. Clapp's hotel.

Q. Is that a public square, or is it an open space? A. It is an open square.

Q. An open lot? A. Yes, sir.

Q. It fronts the hotel in the place? A. Yes, sir.

Q. It is not very far from the house? A. It is close by.

Q. Describe to the court how these men behaved themselves as to decency in the public place in the principal town in the county? A. I do not think they were very well behaved. It was Sunday morning I went down. Will you allow me to tell how I happened to be there?

Mr. BOYDEN. It does not make any difference.

The WITNESS. While I was there they were preparing their toilet for Sunday.

By the CHIEF JUSTICE.

Q. What? A. Washing for Sunday.

Q. Fixing up? A. Yes, sir, for Sunday. That is what I took it for.

By MR. GRAHAM, [resuming].

Q. You were in the hotel? A. I was sitting at the hotel piazza just across the street, only the width of the street between us.

Q. State what you saw there on the part of these soldiers? A. I didn't see anything except I thought they were not good in their manners in so public a place. There was preaching and playing cards at the same time.

Q. In the camp? A. Yes, sir.

Q. Some people attending to that and some people playing cards? A. Yes, sir.

Q. Did you see anything of the men stripping themselves?

Mr. BOYDEN. That is a leading question.

Mr. GRAHAM. Perhaps it is. I did not intend it.

Q. Describe what you saw in that way, if anything? A. I only saw them undress as if they wanted to wash their necks.

Q. Pull their shirts off? A. Yes, sir.

Q. In the presence and in the sight of ladies or anybody else who would be passing? A. Yes, sir. The ladies who sat on the front piazza got up and went in the house. The lady of the house called my attention to it.

By THE CHIEF JUSTICE:

Q. How many pulled off their shirts? A. There was not more than two or three.

Q. To wash their necks? A. Yes, sir. And they seemed to be frolicking, one would run after another around the tents.

By MR. GRAHAM, [resuming].

Q. What was the object? A. I don't know what the object was. They looked as if they had put themselves in that con-

on to get ready for Sunday, and when they were in that dition somebody else to do mischief would come around r him.

Q. In that state of nakedness they ran around the tents? Yes, sir.

Q. Did you have any conversation with Burgen in regard to esting you? A. Yes, sir, a colored man and a white soldier it to the house after my son. I went and started after them r they had taken him. They came and told me that I had go too. I told them all right. When I got there they put under a tree where the other prisoners were, and I remained re, I suppose, an hour. Col. Burgen then came down and it to his tent, and after coming out ashort time, he hallooed know if Mr. Moore was among the prisoners. I hallooed es." He asked me to step over, that he wanted to see me. asked me what I was doing here. I said, "That is exactly at I want to know myself." He said, "Do you belong to s Kuklux organization?" I told him that he could find that t as he had found it out by the others. He said, "I suppose have made a mistake in arresting you." I said, "I would e to know by what authority you arrested me." He said, got a dispatch from Raleigh, this morning, to arrest you," d he pulled a paper out of his pocket as if to read it. bjected to.] He said, "I believe you may go home, you are hardest case I have struck yet."

Q. State whether or not this negro and white soldiers were uniform? A. Yes, sir.

Q. Did they curse Mrs. Moore and offer any indignity? A. t of my own knowledge. I did not hear it. I was out in barn or lot when they came and my wife sent out for me come. All that occurred in that regard was before I got to house.

Q. Was anything said in your presence after you got back the house, to her? A. No, sir.

Q. You lived at the Shops and you had an opportunity of

seeing this camp. Kirk passed over to Yanceyville in two or three days, did he? A. Yes, sir.

Q. And Bergen was commander-in-chief?

Mr. BOYDEN. Let the witness tell himself.

Q. State whether Burgen was commander-in-chief at that camp generally?

Mr. BOYDEN. Who was commander-in-chief? A. It was understood that Col. Burgen was.

Q. State whether or not you saw parties going out and bringing in citizens time and again?

Mr. BOYDEN. That is a leading question.

Mr. GRAHAM. I think it is not leading to enquire whether or not he saw such things.

The CHIEF JUSTICE. The presiding officer thinks the question is proper. A. I saw the parties going out and I saw parties coming in with prisoners. As to whether they were the same parties that went out I could not say.

Q. Was there a negro in the squad generally?

Mr. SMITH. I submit that that is not a fair way to ask the witness. The information wanted is suggested in every question.

Mr. GRAHAM. I only ask to know whether there was or not? A. There was.

Q. [By the Chief Justice.] Was it the same negro? A. Nearly invariably.

Q. Who was he? A. Alick Ruffin.

Q. Was he in the uniform of a soldier? A. He was uniformed as the others.

Q. Was he armed with a musket? A. Yes, sir, sometime with a gun and sometimes with a pistol. When he would go out he would generally carry a pistol. I only saw him a few times when he went out.

Q. He went out on these expeditions with a pistol? A. Yes, sir.

Q. When they came back with the prisoners was he usually armed or not? A. I cannot say for that. I did not go out

much more than I had necessity for. I have seen as many as two or three squads come in and some three or four going out.

Q. State whether you were present when the prisoners were cursed and abuse?

Mr. BOYDEN. That question assumes that they were abused. A. Only once and that was the Sunday that the writ of *habeas corpus* was served upon Colonel Kirk.

Q. Did you go along when the writ was served? A. Yes, sir, Colonel McAllister and myself went in a buggy together.

Q. Describe that scene? A. We overtook Kirk's command about two miles north of Union church and about ten miles from Company Shops. As soon as we overtook the rear guard of the army we told them that we had papers for Colonel Kirk. They said we would have to wait until the time came around to rest again. We told them that it was very important, that they had better send forward and let the Colonel know there were important papers in the rear and perhaps he would stop, if not we would wait. We had not gone very far when they halted, and when they halted we drove up to the rear guard; and the gentleman who seemed to be in command just opened the rear guard and we drove in a little piece. It was very warm and the soldiers fell out on each side of the road under the bushes or anything that would protect them. In a few minutes Colonel Burgen—I did not know him then—came forward and Colonel McAllister gave him the papers. He looked at them and told him he might come forward. I asked him if a man could watch my mule while I went. He said, "your presence is not needed there." While he was gone one of the soldiers asked another if they had ever seen any Ku-kluxes. "I have seen one" he said, "I see one now." The officer asked me what papers had gone forward. I told him it was a package of papers for the Colonel. He said "By God! "I know what it is, it is a reprieve or release of some of these "Ku-kluxes we have got. I will be d—d if I don't get one "of them before he gets away from here, if it is." That was all that was said.

Q. Were you admitted into the presence of Colonel Kirk? A. No, sir, I did not move except to turn around and go back home.

Q. Colonel McAllister after having an interview with Kirk returned? A. He got into the buggy and we turned around and went back home.

Q. Have you a pretty extensive acquaintance in the county? A. Yes, sir, I have lived at Company Shops for a number of years.

Q. What is the feeling between the black and the white people there? A. I think it is good.

Q. I mean what was it in 1869 and 1870? A. I think it has always been good generally, speaking. There are exceptions.

Q. Is there any resistance to the law in that part of the county, that you have heard? A. I never heard of any such thing, in that country.

Q. When this man Corliss undertook to bring up people before the magistrate, charged with having committed this outrage upon him, the process was served without any difficulty? A. I don't know anything about it except that I was at the trial.

Q. At the trial before the magistrate the parties accused were discharged? A. Yes, sir.

Q. Is there another magistrate in your district besides Mr. Faucett? A. Yes, sir, Mr. Hardin.

Q. He lives in the town of Graham? A. Yes, sir.

Q. What is his politics? A. He is understood to be a republican—or an old line whig. He used to be known by that.

Q. In the modern divisions he is understood to be a republican? A. Yes, sir.

Q. The two magistrates in that district are republicans? A. They are understood to be acting with that party.

Q. Have you ever known them to fail to issue a warrant

when called upon by any man claiming to be injured? A. No, sir.

Q. When the soldiers came back from Caswell with the prisoners was it an inclement time? A. Yes, sir, it was very rainy.

Q. State if you know whether or not there was a disposition to allow the prisoners to take shelter in the church during the rain? A. I don't know it.

Q. Kirk encamped at the Shops when he was there that time? A. Near by.

Q. And moved from there to Graham? A. Yes, sir.

Cross-Examination.

By Mr. BOYDEN.

Q. You say you never knew one of these magistrates to refuse one of these warrants when asked? A. No, sir, I never did.

Q. You never were present when asked for? A. For these outrages?

Q. Yes, sir? A. No, sir.

Q. You only state that if they were refused you know nothing about it. When were you foreman of the grand jury? A. The spring of 1870.

Q. When you were on the grand jury you instructed each one to answer for his own neighborhood? A. Yes, sir.

Q. You considered that the duty of grand jurors? Had you heard of Outlaw's death? A. Yes, sir.

Q. You did not think you had anything to do with investigating the facts in reference to his death, that these colored men must attend to that? A. I did not refer to anything particular.

Q. You thought that if there was anything done it must be on the suggestion of the grand jurors from Graham, although you had heard of it? A. I asked every body——

Q. Had you heard of the death of Puryear? A. Yes, sir.

Q. You did not think it was your duty to take any steps unless the men came forward who lived in that section and

complained—that was your idea? A. That was the only step I thought I could take.

Q. That was your idea of the proper course? A. Yes, sir.

Q. How many whippings and scourgings had you heard of before that court met—I mean in that county? A. I have heard of several but I can't give the dates. I do not know when it was. Some were before and some since.

Q. You had heard of a good many before? A. I had heard of a boy named Joe Harvey.

Mr. GRAHAM. If the counsel are allowed to prove facts that the witness has heard we shall expect the privilege of inquiring what he heard these men were punished for, otherwise we object to this course of examination.

Mr. BOYDEN. I have but one object, Mr. Chief Justice. The witness says that he was foreman of the grand jury. What I propose to show is that he had heard of scourgings and a number of them and he did not think proper to make any investigation into these scourging, but satisfied himself by informing the colored man who lived at Graham that he must attend to matters in his own neighborhood and that he made the same statement to each of the other grand jurors. He said he did not think it his duty to do anything further than that. That is the very point I have been seeking to get out, that although he had heard of these murders and scourgings and other offences against the law he did not regard it as his duty as foreman of the grand jury to investigate and ferret out the perpetrators at all.

Mr. GRAHAM. I object, Mr. Chief Justice, to any hearsay on the subject. As to the duty of the witness as foreman of the grand jury, unless he had reason to believe that particular persons had been guilty of offences, he could not make any examination unless somebody came and informed the grand jury that such things had taken place and suggested the names of witnesses who could prove the fact. In such a case, or if he had been aware of the witnesses himself, it would have been his duty to have instituted an examination. They must have

somebody before them to give evidence on which to base their action. It is an entirely new duty of a grand jury now suggested by the learned gentleman, and I think he will find himself mistaken in his conclusion upon a little reflection. As I understand the duty of the grand jury to be, if any man has any reason to suspect a particular person can prove a crime, it is their duty to have that person brought before them to give evidence. Mr. James Bullock, of Granville, was shot down in the road within the last four years, and from that day to this there has never been any discovery of the man who killed him. What would the grand jury of Granville have to do with that, unless somebody comes forward and says he has reason to believe that Mr. Bullock was assassinated by some particular person in order that they may institute any inquiry.

The CHIEF JUSTICE. The presiding officer is of the opinion that what you say would weaken the force of the argument. He thinks the counsel have a right to cross-examine to show the witness' feelings by asking him whether he had heard of any whipping and had any evidence.

Q. You live near Graham? A. Yes, sir.

Q. The court was held in Graham? A. Yes, sir.

Q. You were apprised of the fact that Outlaw had been murdered in that town? A. Yes, sir.

Q. And you did not have summoned before you a solitary inhabitant of that town to see if he knew of anything about it? A. No, sir.

Q. You started no investigation? A. No, sir.

Q. You heard of scourging in different parts of the county? A. I heard of scourging just as a rumor.

Q. You did not offer to start an investigation into any one of them? A. No, sir.

Q. You had heard of Puryear's case too? A. Yes, sir.

Q. You asked no particular questions about that? A. No, sir; we were perfectly at sea, and did not know who to ask.

Q. Had you heard of Shoffner's being run out of the county?

A. I had heard of his leaving. I did not know that he had been run out.

Q. You live at the Shops? A. Yes, sir.

Q. You know of Corliss being chastised? A. Yes, sir.

Q. Where were you that night? A. At home, I suppose. That is where I usually am.

Q. Did you hear any noise that night, any outcry? A. No, sir, it was nearly a mile from where I live.

Q. Did you know, or had you heard about a large number of men being in Graham and disguised in these Ku Klux dresses? A. Yes, sir, I had heard of it at one time.

Q. Did you ever offer to summon anybody to endeavor to find out who they were? A. I don't know whether it was before I was on the grand jury or afterwards.

Q. It has been stated they were there before Outlaw was murdered? A. I don't remember.

Q. You had heard of it? A. I had heard of their being there on one occasion, but what time that was I don't know.

Q. If it was before you did not offer to start any investigation as to the fact? A. No, sir.

Q. You say you recollect of finding two bills? A. I don't recollect how many.

Q. I was under the impression that you said you recollected of finding two. A. There may have been many more.

Q. Do you remember a solitary bill found against a white man? A. Yes, sir.

Q. Who was it? A. No, I will not say that a bill was found. I remember a presentment. I did not charge my memory with it, and would not have remembered these other cases if they had not been prominent cases.

Q. You don't know whether any bill was found against a white man. A. I don't know that any one was sent by the solicitor.

Q. You don't remember? A. Unless it was put down "colored," I cannot tell.

Q. Don't you know that it is always stated "colored" in the

bill? A. No, sir, I do not, because it is the first time I had any thing to do with one of them.

Q. You had heard of Corliss's whipping before you were on the grand jury? A. Yes, sir, I was present at the trial.

Q. You did not offer to investigate that? A. No, Sir.

Q. You did not attempt to find out who committed the outrage? A. No, sir.

Q. Although you were present at the trial before the magistrate, and heard Corliss say that he knew the men? A. He said he did not know, but that he was satisfied who they were from their size and voices.

Q. He told who they were? A. Yes, sir.

Q. And he told that in your hearing? A. Yes, sir.

Q. And when you were foreman of that grand jury, you did not think it proper to investigate that matter at all? A. The magistrate had discharged them.

Q. I am not talking about the magistrate, I am talking about your duty as a grand juror. You heard Corliss swear that he knew the men who came there disguised and whipped him? A. Yes sir.

Q. He said who they were? A. Yes, sir.

Q. Did they prove an *alibi*—that they were somewhere else at the time? A. I don't know whether they proved that they were somewhere else, or that the magistrate thought the evidence was insufficient.

Q. You don't recollect any testimony—only that this man swore they were there disguised, and that he was satisfied, from their sizes and voices, he knew them? A. Yes, sir.

Q. Then they were discharged? A. Yes, sir.

Q. And the grand jury took no notice of the matter? A. No, sir.

Q. [By the Chief Justice.] How many witnesses were sworn on that examination? A. Only two, I think—Mr. Corliss and Mrs. Corliss.

Q. Those were all who swore? A. Those are all I now remember, there may have been more.

Q. The magistrate would not bind them over on that testimony? A. No, sir.

Q. What did Mrs. Corliss swear to? A. She swore positively she knew one of them.

Q. [By the Chief Justice.] Did the defendants have any witness? A. Yes, sir, I think they had. I did not charge my memory with it, I never expected to hear of it again. I think, although I am not positive, that some were examined.

Q. If there was anybody you cannot remember? A. No, sir, I don't remember.

Q. Did Mrs. Corliss prove that she was struck on the head with a pistol? A. Yes, sir.

Q. She stated that positively? A. Yes, sir.

Q. And she knew who did it? A. I had forgotten that fact until you called it to my mind.

Q. Did she show the place where she was struck? A. I did not see it.

Q. Did she say she knew the person who struck her? A. Yes, sir.

Q. Was she in her night clothes when this was done? A. Must I speak knowingly——

Q. What she swore to? A. If that was said I don't remember it.

Q. You say that generally, when a squad went off or came in there was a colored man with them? A. That is what I saw. I don't know how it was when I was not there.

Q. I understood you to say that you saw them going out in two or three cases? A. I said so.

Q. And in three or four cases coming back? A. As many as that, it may be more, I only speak from recollection.

Q. I wish you to state whether you know of any secret organization in the county, I don't care what name they go by? A. I do not.

Q. Have you ever seen any one disguised? A. I never did.

Q. Did you ever see one of the disguises they put on? A. I never did.

Q. What political party do you belong to? A. The conservative—at least I act with it.

Q. I understood you to answer the question when you were asked about the feeling between whites and blacks to say it was very good, but that there was some exceptions in reference to colored men. A. There were some exceptions.

Re-Direct Examination.

By Mr. Graham:

Q. When you acted as a grand juror was Corliss in the county or out of it? A. He was out.

Q. Your superior court is held in June? A. Yes, sir.

Q. Corliss and his wife had left the county? A. Yes, sir.

Q. In relation to these two cases of Outlaw and Puryear, and that of Caswell Holt—did anybody bring any information to your attention? A. Not a soul.

Q. Had you any means of knowing about it? A. None in the world.

Q. Did you have the means of knowing anybody or anything about any of the cases you have been asked about? A. None at all.

Q. Did the solicitor ever bring you in a bill of indictment or did he come before the grand jury and call your attention to anything of the kind? A. Yes, sir, he did, and he complimented the grand jury; he said it was the best one since he had been on the circuit as solicitor.

Mr. BOYDEN. We do not care about his compliments.

Q. My question was whether the solicitor came before the grand jury and called attention to anything which you failed to notice?

Mr. BOYDEN. We have no objection to that.

Q. He did come before you? A. Yes, sir.

Mr. BOYDEN. We do not want anything about compliments given. We understand about these compliments—what they mean.

Q. I ask you whether the solicitor came to the grand jury during the session and called attention to other offences that he wished them to investigate.

The CHIEF JUSTICE. I understand the witness to say he did.

Q. Did you attend to his suggestion in every matter to which your attention was called? A. Yes, sir.

Q. Was there any information laid before you in reference to the matter of Outlaw and Puryear or any other cases of crime that you failed to enquire into? A. None whatever.

Q. You say that the solicitor, about the time you concluded your duties, came in and had a conversation with the grand jury? A. Yes, sir.

Mr. GRAHAM. I submit Mr. Chief Justice that the witness is at liberty to relate what that conversation was. The respondent has gone into the secrets of the grand jury room and the only thing they have found to object to is that the solicitor approved of the proceedings of the body. They say this is a political quarrel and they are determined to make it out so; we desire to show how a republican solicitor regarded the conduct of the grand jury.

Mr. BOYDEN. We say Mr. Chief Justice, that it was a manifest duty of the foreman of the grand jury, as Outlaw was murdered right in Graham, to have summoned every man, woman and child, white or black before the grand jury and to question him or her on the subject; that as the offence took place right there, he had a right to suspect that some one in the town knew it.

The CHIEF JUSTICE. That will be competent when you come to comment upon the witnesses' testimony, but the presiding officer is of the opinion that the managers have a right to show that the solicitor came in and stated that he was satisfied with their action.

Q. State what Mr. Solicitor Bulla said on that occasion? A. When he came in he said the court was about adjourned. The grand jury held on a little longer than the court. It held

on a day after the judge had left. We were not through. He came in to let us know where he could be found, and he said, "This is the best grand jury I ever had on the circuit since I have been solicitor."

Q. That was Mr. Bulla? A. Yes, sir.

Q. You have been asked in regard to hearing of outrages in the county; you say you have heard of two besides that of Outlaw's and Puryear's? A. Yes, sir, I heard of Joe Harvey's and Caswell Holt's.

Q. What was Caswell Holt said to have been whipped for—do you know whether there was any report?

Mr. BOYDEN. The question is outside of any fact of that kind, whether the grand jury should present a man for such an outrage——

The CHIEF JUSTICE. The presiding officer thinks that the question is carrying the evidence a little too far.

Mr. GRAHAM. I am endeavoring to rebut what was said on the other side.

Mr. MERRIMON. It is competent in another point of view. The respondent alleges that Holt was whipped on account of his political affinities; we offer to show that he was whipped on account of his stealing.

The CHIEF JUSTICE. You cannot call that out with reference to the conduct of the witness as a grand juror.

Re-Cross Examination.

By Mr. Smith.

Q. How many indictments did you find that term? A. I don't remember, I did not charge my mind with it.

Q. I understood you to say two?

A. There were two that I remembered because they were rather noted cases.

Q. They are the only ones you do remember to have found at that term? A. Yes, sir.

Re-Direct Examination.

By Mr. Graham.

Q. You passed upon all the bills the solicitor sent you? A.

Yes, sir, I think there was one we did not. That was a man for stealing a sack of flour in Lenoir county—that was against a white man.

Q. Was any presentment made that term of white men or black? A. There was a presentment made there for Kukluxing but whether he was white or colored, I don't know. I remember of writing on the bill that way, "presented for Ku-kluxing."

Q. These three men Allen Paisley, Thompson, and Albright, you found a bill against them?

Mr. BOYDEN. You have gone over that once.

Mr. GRAHAM. My associate thought that I had not.

LUCIEN H. MURRAY, *a witness called on behalf of the Managers, being duly sworn, testified.*

By Mr. MERRIMON.

Q. State your name, place of residence and business? A. Lucien H. Murray, Graham, a merchant.

Q. State whether at any time during the year 1870 you were arrested by armed men, and if so, under what circumstances, and what was done with you? A. On the 27th of July I returned home. I had left home on the 26th and on the 27th when I got back I was informed by my employer—I was then a salesman—that Col. Burgen had been there on the 26th to arrest me, and he had left the orders for me to report at the Shops at their camp the next morning. As soon as I got home, I went up to the shops and into the camp and reported myself to Col. Burgen. He then ordered me under arrest. I was then arrested and kept there until that evening about four o'clock before he said anything to me. He then called me to his tent and said that he had nothing against me only as a witness, and he asked me in regard to the Ku-klux being in town on the night Wyatt Outlaw was hung, and I told him all I knew about it.

Q. [By Mr. SMITH.] State all you said? A. I told him all I knew about it, that that night—some time in the night—I did not know the hour—I was awakened up by hallooing in

the street. I raised up from my bed and looked out of the window and saw no cause for the fuss—I saw no person at all and I laid down, though I did not sleep—but I am too fast—I remarked to a young man who was sleeping with me, what all the fuss was about. He said he did not know. He said "I suppose it is the boys after the breaking up of the show." There had been a little bear show down at Mr. Hunter's. In a short time after that I heard horses on the street and I raised up again and looked out of the window and I saw two men riding down the street and stop under a tree near where I was sleeping and they stayed there a short time. After a short time, there was a vehicle of some kind came up the street—I suppose it came up street—and they drove across under that tree. As the vehicle came up, these two men on horse back rode off East street, then the buggy passed through in the same direction. Burgen insisted that I knew more than that. I told him I did not, that that was all I knew. He then remarked, "If you don't tell, I will break your damned neck to-night." I remarked that I knew nothing more. He said "Go back to your prison, sir." I went back into the prison. That night between one and two o'clock, or about that time, he come to my tent, where I was sleeping, with a candle in his hand. I was not asleep at the time but I raised my head and he remarked "Is that you Murray?" I said "Yes, it is." He then walked back to his tent and in a short time he come back without any light and touched me on the foot. He said "Get up and come out." I said, "Very well." He spoke to me very low. Said I, "Can I put on my shoes." He said, "No, you will not have any use for them long." I got up and went out and he took hold of me and led me into his tent.

Q. Without your shoes? A. Yes, sir, in my stocking feet. When we got into the tent there were three men with pistols. He sat down and he said, "You must tell me all you know about the Kuklux." I said, "I don't know anything about them." He said "You are telling me a d—d lie" or "You are a d—d liar," I have forgotten which, but I know that the

"d—d lie" was passed. I told him that I did not know anything about it. Then he asked me if I did not see Adolph Moore tie the rope around Wyatt's neck. I told him that I didn't see anybody I could recognize that night.

Q. By "Wyatt" he meant Wyatt Outlaw? A. Yes. sir. I told him that I could not recognize anybody that night. He said "None of your d—d lies." Then he got up and taking his pistol he put it at my breast and the other three men did the same. Four pistols were presented at my breast and cocked, and he told me that they would "blow my d—d heart out "if I did'nt tell." I told him that I knew nothing about it. He then demanded a confession and asked me if I was a Ku-klux. I told him I was not. He said I must confess or he would "blow my heart out." I said "I have no information,—I have nothing to confess." He said "Patton and Rogers could not confess anything until they got a rope around their necks and then they could tell about it, and you must do it." I made no reply. He picked up a rope under the bed and put it around my neck and carried me out seventy-five or one hundred yards to a tree and threw the rope over the limb.

Q. Did the other soldiers go with you? A. The four were along.

Q. Armed? A. All armed with pistols. We went out to the tree and the rope was thrown over the limb and then he asked me if I was ready to make my confession I told him I had no confession to make, that I knew nothing to confess. He then drew me up and held me there a little time—not very long, and then let me down. The same confession was still demanded, if I saw Moore put the rope around Wyatt's neck. I told him I did not. He then said "If you don't confess I will break your d—d neck," and he again took hold of the rope and then he drew me up. How long he held me there I don't know but I soon became unconscious. On being let down, I was unable to stand and could not speak or anything else. When I came to I was sitting against the tree with the militia on each side of me rubbing me. My

arms were untied, and the rope was taken off my neck. After I got so I could talk and stand up, the confession was still demanded. I again told him that I had no confession to make, that I knew nothing to confess. He then said to the sergeant, "Hang him on to that limb until eight o'clock to-"morrow morning, and then cut him down and bury him "under the tree on which he is hung." He said "Mr. Mur-"ray, if you have anything to say I give you permission to "speak." I just remarked "All I have to say to you is that "when you hang me dead you have just three more days." A pistol was then put to my breast again—the four pistols as well as I recollect—and he asked me an explanation of the words I used—what I meant. I said "You may live if you "hang me until to-morrow, but I will not insure you for "more than three days." He then stopped awhile and folded his arms and said "Sergeant take him back to his quarters." Then he said to me, "I will give you till ten o'clock to-mor-"row to make your confession; if you don't give it by that "time I will take you out and kill you dead." He then told me that I should say nothing about what had passed—he said if you ever divulge what has passed here to-night I will kill you on sight. I said "very well," and I walked back to my camp. Of course I never said anything about it until I was released.

Q. Where were you released? A. Salisbury.

Q. By whom? A. By Judge Brooks.

Q. How long were you kept in custody? A. I was kept from the 27th of July until the 19th of August.

Q. Where were you kept? A. At the Shops a part of the time, until Wednesday before election. On Wednesday night before the election, Col. Burgen told me that he should give me a parol to report to his camp the next morning to come to Raleigh. Col. Albright was there and he insisted on prolonging the time until Friday morning. Col Burgen did so, and he told me I could remain home on Thursday, and to report to him on Friday morning. Friday morning came and

I did so. I was then sent to Raleigh under guard, and after I got here we were turned over to Col. Clarke. Col. Clarke did not keep us under guard, but he told us to stay around the National hotel until called for. I stayed, I think, two days, when I was called up before him, and I went through some kind of an examination.

Q. Before whom? A. Before Col. Clarke.

Q. At the hotel? A. No, sir, in the capitol.

Q. What part? A. One of the rooms here.

Q. The governor's office? A. I suppose not—I don't know what office it was.

Q. [By the Chief Justice.] What corner? A. That corner, [pointing to the east.]

Q. On the lower floor? A. Yes, sir.

Q. Who was in there besides Clarke? A. Col. Clarke and his adjutant were all who were in there.

Q. Who was he? A. I don't know, I think his name was Parker. I may be mistaken about his being his adjutant.

Q. Who examined you? A. Col. Clarke went through with the examination.

Q. What was done with you then? A. He asked me about the Kuklux, but I knew nothing, and could not tell him anything.

Q. He asked you about the Kuklux? A. Yes, sir.

Q. And you told him you knew nothing about them? A. That I knew nothing about them.

Q. Did he make any threats? A. No, sir, I was treated very kindly while in his custody.

Q. What did he do with you? A. He then paroled me.

Q. What became of you then? A. I then went home—went back to Graham and remained there, and had to report to Col. Burgen every day.

Q. Until you were taken before Judge Brooks? A. Until I was carried before Judge Brooks.

Q. You were not carried to Caswell? A. No, sir.

Q. Did you see much of the troops while you were in prison 'ere? A. Yes, sir.

Q. Describe them to the court, their behavior, discipline nd intelligence? A. Their discipline was very bad as soliers. It did not seem as if they had any respect for the offiers at all.

Q. What was the grade of intelligence? A. I don't think am capable of judging of that, but I think there was very ttle intelligence about them.

Q. Were they orderly or disorderly? A. I don't know as) that.

Q. Have you any acquaintance with the troops? A. Yes, r.

Q. You have been in the army? A. Yes, sir.

Q. Did these troops behave like soldiers at all? A. No, r, they did not behave as we used to have to behave.

Q. State whether you saw many persons brought to the amp? A. Yes, sir, I saw a good many brought into camp.

Q. Who brought them there? A. They were brought in nder guard.

Q. Squads of soldiers with them? A. Yes, sir.

Q. What persons were along—what was their color? A.)o you mean the guard?

Q. Were some white and some black when they came in? ı. Yes, sir, as a general thing they took one or two blacks ;ith them on their raids.

Q. Did they say they went on raids? A. I mean when hey went out to get men.

Q. Did the soldiers say they were going on raids? A. No, ir, I don't know as they did.

Q. They generally took one or two black men with them? A. Yes sir.

Q. What was the usual sized squads who went out? A. They were different sizes—sometimes ten or fifteen, and sometimes not so many.

Q. Were they armed? A. Yes; sir.

Q. You saw these sqads depart and return? A. Yes, sir.

Q. When they returned they brought persons with them? A. Yes.

Q. What number of persons do you think you saw in custody? A. I don't know, there was at one time thirty or forty—about that number.

Q. I understand you to say that Burgen arrested you? A. Yes, sir.

Q. Did he curse you after you were discharged? A. Do you mean after I was discharged by Judge Brooks?

Q. Yes. A. No, sir, I never saw him afterwards.

Q. Do you know whether they hanged anybody else? A. I did not see them.

Q. He told you who had been hanged? A. Yes, sir, Rogers and Patton, and he said they could not tell anything until they were hanged and then they could tell it all.

Q. Did they have you in prison at the court house at Graham? A. No, sir, I was then on parole.

Mr. SMITH. We do not admit that what was there said is competent evidence—the fact that any other persons had been thus treated. We object to the statement if it is intended as evidence of the maltreating of these others persons.

Mr. GRAHAM. It is an admission by Burgen that he had hung two other men.

Mr. SMITH. We object to that as evidence of the fact. We admit it may be received in connection with the treatment of this prisoner but not as truth of the facts stated in the conversation.

The CHIEF JUSTIE. The presiding officer thinks it is competent with the view of showing that Burgen was trying to scare the witness.

Mr. SMITH. But not as evidence of the facts stated.

Q. Did you know any of the black men there? A. I knew some of them.

Q. Who were they? A. I knew one named Hark Ruffin, another was named Aleck Ruffin. There was one by the name

of Travis Ruffin, one by the name of Alfred Barnhill, and another by the name of Levi Dickey. Those are all I know. I know there were some others that belonged to the camp after I was paroled.

Q. Who were they? A. Dick Hurdle, Allen Freeland and Dan McAdam.

Q. Did you ask Burgen by what authority he had arrested you, at any time? A. I don't recollect that I did.

Q. You had committed no offense? A. No, sir.

Cross-Examination.

By Mr. Boyden.

Q. Are you a relation of the former sheriff of Alamance? A. No, sir.

Q. You live in Graham? A. Yes, sir.

Q. You were there the night Outlaw was murdered? A. Yes, sir.

Q. And you heard a voise? A. Yes, sir.

Q. You rose up and went and looked out of the window? A. Looked out of the window from the bed.

Q. You saw no cause for the disturbance? A. No cause.

Q. Afterwards you heard a noise again? A. Yes, sir.

Q. You looked out and saw two men and you heard a vehicle drive along? A. I saw that too.

Q. Was it a top buggy? A. I don't know whether it was a buggy or not but it was a top vehicle.

Q. They were about how near the tree where this man was hung? A. It was thirty or forty yards from that place.

Q. And they drove off? A. Yes, sir.

Q. Did they go towards the place where the body was found? A. No, sir, they went directly from it.

Q. When they came along did they come as if they were coming from where the body was? A. This noise was sometime after I heard the hallooing. There was no fuss on the street except the horses when I saw these men.

Q. Which way were these men coming—the body was hung on West street—were they coming from West street? A. No,

sir, they were coming from the appearance of the noise down North street.

Q. What time of the night was this? A. I suppose it was twelve or one or two o'clock.

Q. Did you hear any guns fired? A. No. sir, I heard no guns.

Q. When you got up in the morning did you see this body? A. Yes, sir.

Q. Did you look to see which way the vehicle went? A. No, sir, it was raining the next morning.

Q. You did not try to trace that out? A. No, sir.

Q. You did not try to do it? A. No, sir.

Q. Was there an appearance as if there had been a good many horses in town? A. I cannot say as to that. It was very late that morning when I got up, and there had been good many people around the tree. I saw some horses track there.

Q. Did you see any men disguised in Graham? A. No, sir.

Q. How were these men dressed you saw that night? A. They looked as if they were in black. They were not in white, I know; if they had been I would have noticed it.

Q. Was there any effort made that morning to search and find out who was connected with that hanging? A. Not that I know of.

Q. What sort of a man was Outlaw—was he a well behaved man? A. As far as I know he was.

Q. There is nothing against him that you know of? A. Nothing that I know of.

Q. Had he heen in any office in that county? A. Yes, sir.

Q. What office had he held? He had been town commissioner.

Q. Have you any knowledge of any secret political organization in the county by whatever name it may be called? A. I don't know anything of my own knowledge.

Q. Have you heard any persons admit they belonged to it?

Mr. GRAHAM. We object to the question.

Mr. BOYDEN. We don't ask with a view of having those statements of the witness taken as evidence. We wish to find out in order that we may send for them.

The CHIEF JUSTICE. The presiding officer thinks the question is not competent.

Mr. BOYDEN. I do not offer it as any evidence of the fact.

The CHIEF JUSTICE. There is no rule by which a party can fish out evidence in that way unless he goes to the witness after he has left the stand.

Q. You have never seen anybody disguised? A. No, sir.

Q. And you have never seen any of the disguises? A. I never did.

Q. Do you know anything about Puryear? A. I do not.

Q. You did not see his body? A. No, sir.

Q. Did you ever see any body with marks on where they had been scourged? A. No, sir.

Q. Do you know anything about Burgen being arrested by order of the governor for his treatment of you? A. No, sir.

Q. Burgen told you he was coming to Raleigh when you were required by him to report? A. I did not say that.

The CHIEF JUSTICE. I understood the witness to say that he said the witness was to come to Raleigh?

The WITNESS. Burgen sent me to Raleigh under guard, he did not come himself.

Q. You did not see him here? A. No, sir.

Q. You don't know of his being called before the court martial? A. No, sir, I don't know anything about it.

Senator ROBBINS, of Rowan. With the view of arranging for time to be given for the defense to prepare for their case, I would like to ask the managers when they will probably get through with their testimony, if they can state.

Mr. GRAHAM. We cannot anticipate. The cross-examitions of our witnesses have been a great deal longer than we ex-

pected. The colored man was on the stand yesterday for over two hours, but my impression is that we will get through with our testimony in two days. I will state however that I have not consulted with my brethern on that point. It will depend a good deal on the cross-examinations.

Senator ROBBINS, of Rowan, offered the following order.

Ordered, That in view of the fact announced by the managers that they will be through their testimony in two days, the respondent is allowed until Monday, February twentieth, to open the case for the defence.

Mr. GRAHAM. We do not wish to be bound by the statement made, because it is possible we may require a longer time. The recital in the order seems to imply an admission which I do not intend to make.

Senator ROBBINS, of Rowan. That recital is not binding upon the managers; they can have the whole time until the twentieth. We desire to have some time fixed in order to allow the respondent to have his witnesses ready.

Senator GRAHAM, of Orange. Mr. Chief Justice, I think the motion is premature, and therefore I move the court adjourn.

The CHIEF JUSTICE put the question on the motion of Senator Graham and it was decided in the affirmative.

So the court adjourned.

FIFTEENTH DAY.

SENATE CHAMBER, Feb. 14th, 1871.

The COURT met at eleven o'clock, A. M., pursuant to adjournment, Hon. R. M. Pearson, chief justice of the supreme court, in the chair.

Proceedings were opened by proclamation made in due form by the doorkeeper.

The CLERK proceeded to call the roll of senators when the following gentlemen were found to be present:

Messrs. Allen, Battle, Beasley, Bellamy, Brogden, Brown, Cook, Council, Cowles, Crowell, Edwards, Eppes, Flemming, Gilmer, Graham, of Alamance, Graham, of Orange, Hawkins, Hyman, Jones, King, Latham, Ledbetter, Lehman, Linney, Love, Mauney, McCotter, Merrimon, Moore, Morehead, Olds, Robbins, of Davidson, Robbins, of Rowan, Skinner, Speed, Troy, Waddell, Warren, Whiteside and Worth—40.

Senator GILMER moved that the reading of the journal of the proceedings of yesterday be dispensed with.

The CHIEF JUSTICE put the question on the motion of Senator Gilmer, and it was decided in the affirmative.

Senator GRAHAM, of Orange, moved that Henry A. London, Jr., be directed to act as clerk of the court in the absence of Mr. W. L. Saunders, the clerk, who was unable to be present by reason of illness.

The CHIEF JUSTICE put the question on the motion of Senator Graham, and it was decided in the affirmative.

Senator GILMER offered the following order:

Ordered, That from to-day the hours of the sitting of this court shall be from eleven o'clock, A. M., to one o'clock and thirty minutes, P. M., and from three P. M., to five, P. M., except on Saturdays, when the session from three P. M. to five P. M. shall not be held.

The CHIEF JUSTICE put the question on the adoption of

the order of Senator Gilmer and a vote was taken thereon.

Before the decision was finally announced,

Senator GRAHAM, of Orange, called for the yeas and nays.

A sufficient number seconding the call, the yeas and nays were ordered.

The CLERK called the roll on the adoption of the order submitted by Senator Gilmer and it was decided in the affirmative by the following vote:

Those who voted in the affirmative were:

Messrs. Battle, Beasley, Brown, Council, Cowles, Crowell, Gilmer, King, Ledbetter, Lehman, Linney, Love, Mauney, McCotter, Merrimon, Morehead, Robbins, of Davidson, Robbins, of Rowan, Troy, Waddell and Whiteside—21.

Those who voted in the negative were:

Messrs. Allen, Bellamy, Brogden, Cook, Edwards, Eppes, Flemming, Graham, of Alamance, Graham, of Orange, Hawkins, Hyman, Latham, Moore, Olds, Skinner, Speed, Warren and Worth—18.

WILLIAM PATTON, *a witness called on behalf of the Managers, being duly sworn, testified as follows:*

By Mr. MERRIMON.

Q. State your name, age, residence and place of business. A. William Patton, I reside in Melville township, Alamance county, and I am a farmer.

Q. How old are you? A. 40.

Q. State whether at any time during the year 1870, you saw any armed men in the county of Alamance, and if you did, state if they did anything to you and if so what—give us an account of the whole matter as far as you can? A. I was arrested by armed men, Lieut. Hunnicutt, Aleck Ruffin and others, about three miles from home. I was out with a thrashing machine.

Q. State the county? A. Alamance. I was carried to the camps at Company Shops.

Q. At whose house were you? A. I was at no house, I was on the big road going down to James Bratche's farm.

Q. Under what circumstances? how many men was their armed? A. Eight men arrested me and one black man named Aleck Ruffin.

Q. State what they said to you? A. They told me that I must consider myself under arrest, they wanted to make a witness out of me and they carried me up to the camp.

Q. What did they do to you? A. At night at a late hour, Col. Burgen called me out and told me to come to his tent. I went in. He told me that I was a Kuklux, that I was along when Wyatt Outlaw was hung and that I would have to come out and tell what I knew. I told him I did'nt know who was along, and he said that I was a God d—d liar, and he intended to shoot me and he got his pistol and presented it to my breast, and told me if I had anything to say to come out with it. He then called for a rope and tied it around my neck and swore that he was going to hang me. He took me out to the woods, about 150 yards from the tent, and threw it over a limb, and drew it up and stretched my head up. Before he did this he told me if I had any confession to make to come out with it. I told him I had none; he kept me for some time, and then he let the rope down. I told him I had nothing to say and he started back to the tent. I fainted on the way going back. He was around cursing me, and he tried to get me to come out with things I did not know anything about, and ordered me to be taken back to his tent, and swore that he intended to have everything out of me that night. He talked to me for some time, and I told him I did'nt know any thing to tell him, that I didn't know at that time why Outlaw was hung, or about the Kuklux, or anything about it, and he took the rope off my neck, and tied it around one of my wrists, and took me outside to a large goods box and kept me there till the morning. Next morning he came and cursed the guard for not undoing me before daylight come. He took me in his tent and said he had a paper written out there which I

was to sign that paper, and in the excitement I did so. I didn't know what was in it. He told me it was what he had taken down, and he then ordered me back to the tent, and put me in there by myself for three days, and gave orders not to talk with the other prisoners in the camp, and then I was at liberty to go about with them after three days; I was kept there until I was ordered down here by Governor Holden.

Q. State what was done after you came down? A. Governor Holden examined me how I was treated by Burgen. I did not come out and tell him how bad I was treated. I told him the rope was used around my neck.

Q. Why didn't you tell him how you were treated? A. I was right smart alarmed and was scared and was under arrest and I didn't come out to tell him all about it.

Q. He examined you? A. He examined me a little and asked me some questions about it.

Q. Who else examined you? A. Douglas examined me and Colonel Clarke in the capitol.

Q. What office? A. In Colonel Clarke's office, and Douglas examined me a little in regard to it in his office.

Q. What office did Douglas hold do you know at that time? A. He was general I think, sir.

Q. Adjutant general? A. It was my understanding that he was.

Q. Where did the governor examine you? A. In his office.

Q. Do you recollect the time? A. I don't recollect exactly the time. It was some time in July when I was arrested, and I was brought down here in August.

Q. Before or after the lection? A. The day before the election, I think.

Q. How long were you kept here? A. About three days.

Q. Did you sign a paper down here? A. I did.

Q. Under what circumstances? A. To go home—circumstances to go home.

Q. Where did you sign it? A. I signed it in Colonel Clark's room. Morris presented it to me to sign.

Q. Captain Morris? A. Yes, sir.

Q. Did you know what you signed? A. I did not know exactly what was in it. They named over some things I didn't know—something like treatment that Colonel Clarke gave me —Hunnicutt.

Q. Where did you go when you went back? A. I stayed here until I was discharged by Governor Holden.

Q. Stayed here in Raleigh? A. Yes, sir; I went home after I left Raleigh.

Q. (By the Chief Justice). You were not put under guard again? A. No, sir.

Q. At the time they wanted you to sign the paper down here, state whether the governor said anything to you about signing it? A. No.

Q. State what he said, if anything, about any disclosure that you had to make? A. He told me that he wanted me to come out, and tell him all that I knew about the concern in Alamance, he wanted to know something about it. I told him I didn't know but very little about it, and could not tell him much about it. He said that his intention was to put down these fusses up there in Alamance.

Q. Did he tell you anything about signing a paper that Douglas drew up? A. No, sir.

Q. State whether Douglas read any paper that was presented to you to sign, and urge you to sign it? A. He did in his own room, in his office.

Q. Where was his room? A. It was over in the National hotel, as well as I can recollect. I did not sign it then.

Q. Who was with him then? A. The guard was with him.

Q. Any threats made against you? A. No, sir, he told me he wanted me to sign that paper.

Q. Did you see Burgen while you were down here? A. I didn't see him while I was here.

Q. State whether any person urged you to sign that paper, and said to you, the sooner you signed it the sooner you would get away from here? A. Captain Morris told me if I signed that paper I might go home.

Q. Who was Captain Morris? A. I don't know, sir. I suppose he belonged to the crowd here at this place. I never saw the man before.

Q. Are you sure about that name? A. That is what he told me his name was.

Q. Morris? A. Yes, sir.

Q. Are you sure of that? A. I think so, sir.

Q. Did he have on soldiers' clothes? A. Yes, sir, I think he had.

Cross-Examination.

By Mr. BOYDEN.

Q. What is your christian name? A. William Patton.

Q. How many papers do you say you signed? A. I do not recollect but signing two here.

Q. You signed two here. A. Yes, sir.

Q. Do I understand you to tell the court they were not read over to you, and you didn't know what was in them? A. There were some words named over to me, but I don't recollect it being read over.

Q. I wish to put the question to you distinctly—was not each paper read over to you, that you signed, in your hearing before you signed it? A. No, sir.

Q. Where did you sign the first one? A. I signed the first one in Douglas' office, in his room, I suppose.

Q. The first was in Douglas' room, in the National hotel? A. I don't recollect about signing one there, sir, but he had some talk with me there in that place. I don't recollect about signing one there.

Q. I understand you, you were asked to sign a paper there? A. Yes, sir.

Q. Whether you signed it there or not you do not recollect? A. I do not recollect.

Q. Was that the first time you had been asked to sign a paper?

Q. [By the Chief Justice.] After you came to Raleigh?

A. I think I was asked to sign one before that.

Q. Where was that? A. It was in the house here in one of the lower rooms. I do not know which room it was.

Q. Who asked you to sign ii? A. I think Douglas asked me to sign that paper.

Q. Did you sign it? A. I think I did.

Q. Was it read to you before you signed it? A. I don't think it was. I don't recollect that it was.

Q. Did I understand you to tell the court that you don't recollect whether it was read over to you or not? A. Yes, sir.

Q. You do recollect that you signed it? A. Yes, sir.

Q. Do you know what was in it? A. He told me something about what was in it. I cannot recollect now.

Q. You don't recollect what he told you was in it? A. No, sir.

Q. Did you sign any other paper after you came here? A. I signed two papers.

Q. Where was the other one signed—this one—where was the other one signed? A. In Colonel Clarke's office.

Q. Was Colonel Clarke present? A. He was not, sir.

Q. Who were present? A. Morris.

Q. You don't say Douglas was there? A. No, sir.

Q. Was anybody but Morris there when you signed it?. A. No, sir, not at that time.

Q. Whose room was it in? A. In Colonel Clarke's room.

Q. Was there but one person there and he represented his name to be Morris? A. Yes, sir.

Q. What dress did you say he had on? A. He had on citizen's clothes.

Q. Did you sign any paper before you came to Raleigh? A. Yes, sir, I signed one.

Q. Who was present when you signed that? A. Mr. Burgen.

Q. Who else? A. No one else but the guard—he was present. I was brought down here one evening, and kept here till the next morning.

Q. I ask you if you didn't sign a paper before William R. Albright? A. I think not.

Q. Look on that paper (producing a paper and handing to the witness.)

Mr. GRAHAM. Mr. Chief Justice, we object to the proof of any such paper. I say that a man in duress as this witness was at the time these three several papers were signed by him cannot be bound by anything he said and cannot be contradicted by anything which he signed under such circumstances. I understand this to be one of the papers he signed after he had been hung and that he signed it while he was still under arrest. Such a paper cannot be given in evidence for the purpose of affecting his credit as a witness. Suppose he were on trial for ?reason or any other crime and that a paper were offered in evidence us one he had signed after he had been hung by the neck and tortured and tied down on a box during an entire night, and then sent under guard to the seat of government; and then suppose he had been brought before the highest officer in the state, whose subordiate officers had committed these outrages upon him—to say that a paper should affect his credit on his trial is to contradict the settled principles of evidence. Suppose he had made a contract under these circumstances with these men with their bayonets and swords raised over him on the highways or when they had then carried him to a prison to Company Shops and had hung him up to a tree, I submit that such a contract would be of no binding force; and that in this case no such statement can be received for any purpose whatever.

Mr. BOYDEN. Mr. Chief Justice, I am not a little surprised at the proposition laid down by the honorable counsel for the managers. He supposes the case of a contract signed by the witness under duress upon which he is held. The gentleman alleges that such a paper cannot be offered in evidence. Sir, it is a universal rule that such papers are to be received for what they are worth. If the counsel for the managers shall satisfy this court that the paper we now offer w

ned under duress and under threats, then it will go for thing. But surely it is to be received and taken for what it worth. The gentleman assumes that all that he has proved the witness as to his signing the paper is the truth; that, , is a question to be investigated here by this court. We ny the truth of it. The question comes up when the case is to finally passed upon, whether he signed that paper voluntarily d knew every word that was in it, or whether there were threats d he signed it under duress. I admit that, if it is established the satisfaction of the court that he signed it under duress it uld go for nothing. But, sir, it is the first time I reckon the position was made in a court in North Carolina, that a per signed by a party cannot be offered in evidence against n. It is testimony—beyond all controversy. It seems to there is no lawyer in this body but knows it is competent be received; and nothing is clearer than if it turns out that was signed under duress, it will be of no avail.

Mr. MERRIMON. Mr. Chief Justice, if this witness were trial for some alleged offence and a statement, even sworn by him, were offered, and it appeared to the court by the eliminary evidence that it was extorted from him, the court uld not hear the paper nor would it allow the paper to be d in evidence because it was extorted. If it shall turn out -and-by, upon further proofs, that it was not extorted, then it y be competent for the respondent to introduce it. But, in much as the witnesss swear that he was in duress at the time e papers were executed, that he did not know what was in em, that he signed whatever was presented to him without e papers being read over to him, I say it is like a case where is indicted and they trying to prove against him a statement t he had made when he was under duress, and controlled those who had him in custody. How is this case different m that? Here is a witness on the stand before this court. e swears that a rope was put around his neck after he had en arrested by a party of armed men, that he stated he knew ew nothing to confess when a confession was demanded;

that he was then tied down to a box during a whole night and was then taken into the tent of his captor and was interrogated; that then a paper was drawn up and the contents of which he did not know and which he signed without reading or hearing read. Yet, with this fact staring the court in the face, the gentlemen in a remarkable style of declamation insists that statement may be admitted as evidence in the first instance! I shall not engage in any such declamation. These are facts, and sir, it is a plain principle of law that extorted statements *prima facie*—(and they are so here for he swears to it,) are not to be admitted in evidence and never can be until the *prima facie* case is destroyed by testimony.

Mr. SMITH. Mr. Chief Justice, it is precisely becase it is the case of a witness, and not case of a party on trial that the rule stated by the gentlemen does not apply. You cannot give in evidence the character of an accused man when he is on trial, nor can you give his confession obtained by any amount of undue influence, whether addressed to his fears or to his hopes. The character of the witness is also a matter to be investigated. He brings his character into court when he comes here to testify, It is becausethe jury are asked to believe him, that his character becomes an element to be considered with the view of ascertaining the credit to which his testimony is entitled. Let us look at this; suppose these statements were all true, which the witness makes. The gentleman assumes the truth of what the witness has said though that is the enquiry now before this court.

Mr. MERRIMON. I say it is *prima facie* true because he has sworn to it.

Mr. SMITH. All *prima facie* cases are open to contradiction.

Mr. MERRIMON. So we admit.

Mr. SMITH. Hence we are now offering proof to show that the credit of the witness is not such as to command the respect of the court. Has the counsel for the managers a right to assume that everything the witness states is correct and we not be

permitted to pursue a course of enquiry calculated to diminish the credit which the witness is entitled to? That, sir, is the scope and extent of the ground taken on the other side.

Again, sir, a written statement is no more to be excluded than a verbal statement. Have they not gone into verbal narrative of what occurred? They ask witnesses any questions they please. They ask him what he did and what he said while he was in this state of duress. But when we ask questions, we are met with the objection, that he was under duress and that hence it is immaterial what he said. They can show what they please, but we cannot examine the witness about the facts in relation to which he has testified. I ask again what is the difference between written and parole evidence in regard to its admissibility if produced by threats or any other improper influences? None in the world. The written declarations are just as competent as the spoken declarations. We have no more right to ask him what he said than we have a right to ask what he put in writing and signed. The gentleman cannot make a distinction between the cases as I have put them, and it is competent, as I submit to this court, to investigate that transaction fully and not let it rest upon the mere direct examination of the witnesss.

But, sir, the paper that we have offered is not one of the papers which the gentleman has enquired about. The witness has denied that he executed any such paper. We exhibit him a paper which purports to have his name signed to it, and which was executed before a clerk of the court. There is no evidence that there was any duress when that paper was given, if it was given by the witness at all. The gentleman assumes that they have a right to interrogate the witness as they please and then shut our mouths the moment we undertake to ascertain what his written declaration was. Is not that as important as a spoken declaration when the statement of the occurrence is in writing, and about which there can be no mistake? Is it not as competent and as reliable evidence as the recalled words drawn from the witness long afterwards?

But, sir, how is it about this question of duress? This is an erroneous view of duress as a matter of defence on a trial. If it turns out that the act with which a person is charged was done under duress, which destroyed his voluntary agency and his legal freedom, that avoids the instrument just as it diminishes and defeats evidence offered here. But this evidence is competent and it comes out as a matter of right; but what weight shall be given to it, what effect it shall have are to be ascertained when the senate have possession of all the attending circumstances. Suppose we can show that deliberately and carefully the witness read over the paper or that it was read over to him, and that he not only subscribed but solemnly swore to it, are we not to show that fact to his discredit as respects his memory or his integrity? And will the managers ask this court to believe testimony the truth of which we have been prevented from rebutting? That is substantially the argument on the other side. We respectfully submit, on the part of the respondent, that this paper coming out as it does on the cross-examination is competent and proper evidence.

Mr. GRAHAM. It will be remembered by the presiding officer of this court that there is a decision made in the trial of Judge Henderson in the case of the State *vs.* Roberts to the effect that where a man has once made a confession under inducements of hope or fear, any admission he makes afterwards in relation to the matter, even when he is not under duress, is not competent evidence. If the gentleman could show that this man signed these papers before he was arrestod, very well; but after he was put under arrest in the manner he was; after he was rudely taken up on a public road and told that he was wanted as a witness, and was carried to the camp and sought to be cajoled and flattered and then was threatened in order to get evidence out of him and failing that, the rope was applied, I say that any confession made after he had been thus treated is not admissible. It is not admissible for the sake of humanity. If a man should contradict himself under a fear of instant death or threat of being summarily dealt with by a military

court, the contradiction, ought not to weigh a feather. I say this duress was upon him, that he was not a free agent and having been put in a state which deprived him of free agency he was not responsible for any thing that he said or did. Sir, if they want to contradict him, they should have restored to him his free agency before he made his statement. Here his declaration cannot affect him in any way, for that he was in duress is manifest. It was an attempt to apply the rack and to extort evidence; and to admit statements procured in that way, has never been permitted by the common law, and it has been a a reproach to those countries which have practised it, in all times.

Mr. BOYDEN. I wish it distinctly understood, Mr. Chief Justice, that I am not seeking to justify any conduct or attempt to extort confessions from witnesses. I am willing to admit that the proposition laid down by Chief Justice Henderson, in the case referred to, is good law. We practice upon it every year in this state. What is it? That where a man is on trial, and it is alleged that his confessions have been procured by threats, by hope or by fear, when the court inquires into that, if it ascertains the fact to be as alleged, they are no evidence against the man on trial, and all subsequent confessions being attributable to the same motive are rejected. But that is not our case. A witness is brought here and we desire to sift his testimony. When he says that he signed this paper under duress, we want to know what was the duress and what was the threat that was made. We say he swore to this paper before a citizen—a clerk of the court—and we want to know if every word was not read over to him. We want that testimony first, because we believe the paper contains the truth and that he was telling the truth and nothing but the truth, and that he swore to it as the truth, and second to show that he has now come here prepared to tell an untruth and swear to it. We wish to examine him upon that point, and surely we have a right to know all about this matter—all the circumstances which induced him to sign this paper. Further-

more, this paper is not one of those which has been alluded to in the direct examination of the witness. The point has been decided time and again in our courts. A witnesss was asked whether he had not committed the crime of perjury in the state of Georgia. It was objected to, and the case went to the supreme court; and the court there decided that the inquiry being in reference to what took place in the state of Georgia, and beyond the jurisdiction of this state he was bound to answer it. And the court has decided recently that you may ask a witness any question which tends to disparage him, to show that he is not worthy of belief; and though if the answer to the question would tend to convict him of the crime, he is not obliged to answer, still the question may be put to the witness.

Senator JONES. Before the counsel conclude the argument I ask whether, if the witness admits signing the document, it is designed to offer the paper as evidence of the facts contained in it, or whether it is merely to contradict the statement of the witness as to his signing such a paper.

Mr. BOYDEN. Mr. Chief Justice, I suppose it is very clear, under the law, that it can only be received to discredit the witness.

Mr. MERRIMON. What is the date of the paper?

Mr. BOYDEN. The 2d of August, 1870.

Mr. MERRIMON. This paper is offered to impeach this witness. If these declarations were made under duress, if they were extorted from the witness, they are absolutely null and void, and just the same as if they had never been uttered. I take it that my friends will not deny that proposition. Then I say that they are not competent for the purpose of contradicting the witness any more than they would be evidence affecting him if he were on trial for an alleged offence. And why? Upon the ground that whenever the court hears anything it must hear something that has weight in it, something that is evidence, something that can be thrown into the scale to enable the court to make up its judgment. This being extorted, it can have no such weight, and therefore it is as null and void as

if it had been never uttered. It cannot be heard by any court or anybody, and for any purpose, even for the purpose of contradicting a witness. Will the gentlemen on the other side say they intend to show that it was not extorted *Prima facie*, it was extorted, because the witness has sworn that it was. When they rebut that presumption, and the court is satisfied that it is rebutted, they may offer these papers for the purpose of impeaching the witness; until that, the court is to judge upon the presumptions raised by the *prima facie* case.

Mr. SMITH. Mr. Chief Justice, I think the gentleman confunds a distinction that exists between this tribunal and the administration of justice in the ordinary courts of the country where there are certain functions belonging to the judge and certain functions belonging to the jury. This court is to try the facts and the law both. And no harm could result if this doctrine were true because the court must hear the species of evidence offered to judge of its admissibility.

It being then before them they would give what weight and effect they saw proper to it. But, as I said, the gentleman confounds utterly and entirely the distinction between the man on trial for a crime and the relations of a witness to the cause. If I sue a person upon a bond and he pleads duress and establishes that fact, it is a defense to the action. But the evidence is not ruled out; it is heard, to ascertain whether there was duress, then the court instructs the jury that, as a matter of law, it was not obligatory and binding. It is the jury who find, as a fact whether there was such duress. The court do not determine that, like any other fact and it is to be passed upon by the jury.

Mr. MERRIMON. Does the gentleman wish me to reply to him now?

Mr. SMITH. I have no objection.

Mr. MERRIMON. The argument of the gentleman, Mr. Chief Justice, is more specious than solid. Where a deed is offered *prima facie* it is valid and not executed under duress. Hence it is admitted and the duress has to be proven. But

this is a different case. Here the witness swears that he signed these papers under duress and a *prima facie* case is made out that the statements were extorted from him; and we say they cannot be admitted until that presumption is rebutted by proofs.

Mr. SMITH. But the difficulty is that instead of leaving that fact to be passed upon by this court as a jury deciding the facts, the gentleman undertakes to rule out the evidence. I contend, sir, that the evidence is not to be rejected and taken from the consideration of the jury upon the allegation that the act was the result of duress. That fact goes to the jury like any other fact. The instruction of the court to the jury would be that if they believed that it was procured by duress it was not obligatory and so the jury should find. But, sir, the evidence is not kept from the jury. The court does not rule it out. They do not attempt to pass upon that. If they did it would be invading the province of the jury and assuming functions that do not belong to them.

There is no case to be found in the books where a court has undertaken to rule out evidence from the jury in a case of duress. The fact of duress is the matter of inquiry. The question is, was there duress? And if the jury find that there was, the act is void. How do the gentlemen meet this case? They have gone into an examination of the very subject about which we propose to cross-examine the witness. They have themselves introduced this evidence to the court, by this very witness. And now they propose to close the door on the cross examination upon the ground that the rule did not prevent them from introducing it. They allege the fact and assume it to be true; and call upon this court, in advance of the decision on the merits, to hold that the witness has stated truthfully. Suppose, in the further stage of this case there shall be an amount of evidence that would satisfy the court that instead of their being in duress, the statement was entirely voluntary, if you exclude the proof we will not have had the benefit of it. The witness may have gone. We have

no opportunity of proving the fact at all. Did ever such a case as that occur in the judicial practice of the state? Was there ever an instance in which a disputed question of evidence was ruled out and not permitted to go to the jury when it was a fact to be passed upon by the jury? I insist we have a right to inquire into the whole transaction whether what the witness said under oath heretofore is the truth or what he now states on oath is the truth, to show a conflict between his testimony then and his testimony now. It is a part of the argument of the managers to show that the court ought to give credit to the sworn statements of the witness now and not to his sworn statement at a former time because of an alleged duress. It is prejudging a point not now before us, to rule out the evidence and call upon the court to say, in advance and before the cross-examination is exhaused, that the testimony we propose to extract from the witness was the result of coercion and duress and is for that reason not admissible.

The CHIEF JUSTICE. The presiding officer decides that the evidence is competent and ought to be heard and be passed upon for what it is worth. Of course if it was obtained under duress, it will pass for nothing. The principle upon which the evidence is heard is, that it forms a part of the transaction which has already been inquired into on the part of the managers. It is a rule of fair play, that if you hear a part you must hear the whole. The case of the State agents Roberts, referred to, is good law, but that applies to a man put on trial. If he was forced to make a confession, that confession cannot be heard to convict him. But the case is different with a witness. The jury have a right to know all that was said and done at the time, and then they pass upon the question. The presiding officer can only say that in all his reading and experience on the bench he has not come across a single case in any law book or a single passage from any writer on evidence that raises this question. They all seem to take it

for granted that if a part is heard the whole must be heard and then let it be passed upon for what it is worth.

Senator GRAHAM of Orange. I would ask the opinion of the chief justice if this is not correct law that when a case is once established that duress has been used, the presumption does not continue until it is rebutted.

The CHIEF JUSTICE. The presiding officer replies by stating that there is no such rule, because it canot be established before the matter is fully heard. The general rule is that when you hear a part you must hear the whole, not with the view of taking for granted what is contained in the paper is true—but taking it for granted that the paper was signed. The circumstances under which it was signed is another question.

Senator JONES. I would like to understand the scope of the decision of the presiding officer, whether it the witness admits he did sign this paper it will be competent to be read to the court, if it is to be read as evidence in the case.

Senator EDWARDS. I understand the question to be whether or not the paper offered in evidence is admissible as affecting the character of the witness. That is the question as I understand it.

The CHIEF JUSTICE. The question is not whether the paper contains the truth but whether as a fact he did under some circumstances or other sign the paper.

Senator GRAHAM, of Orange. I desire that the question shall be stated.

The CHIEF JUSTICE. The presiding officer understands it to be this. The Managers have proved that under certain circumstances a paper was signed. The question is whether the respondent has a right to offer the paper as part of the transaction, not with the view of proving that its contents are true but with the view of impeaching the credit of the witness.

A sufficient number seconding the call for a decision of the question by the senate,

The CHIEF JUSTICE put the question on the admission

of the question offered by the respondent's counsel and it was decided in the affirmative by the following vote:

Those who voted in the affirmative are:

Messrs. Allen, Beasley, Bellamy, Brogden, Brown, Cook, Council, Cowles, Crowell, Edwards, Eppes, Flemming, Hawkins, Hyman, King, Latham, Ledbetter, Lehman, Love, McCotter, Merrimon, Moore, Olds, Robbins, of Davidson, Robbins, of Rowan, Speed, Warren, Whiteside, Worth—29.

Those who voted in the negative are:

Messrs. Battle, Gilmer, Graham, of Alamance, Graham, of Orange, Jones, Linney, Morehead, Skinner, Troy, Waddell—10.

So the questson was admitted.

Q. Look at the paper purporting to have been sworn to and signed before Mr. Albright—did you sign that paper before Mr. Albright? A. I don't recollect that I did—I think not.

Q. Did you sign that other paper? [a second one produced]. A. Not before Albright.

Senator EDWARDS. Is the counsel introducing another paper?

Mr. BOYDEN. There are two papers signed by him. We ask about the one first signed before Albright, and he says he didn't sign that. That ends that.

The CHIEF JUSTICE. He don't recollect signing that first paper, so now take the other.

Q. Look at the other paper signed before Colonel Clarke? A. I signed one before Colonel Clarke.

Q. Look at the signature to that paper [handing paper to witness] and say whether it is your signature? A. It looks like it.

Q. I ask you whether it is you signature or not? A. I think it is, sir.

Mr. GRAHAM. I understand that he identifies that as the one sworn to before Colonel Clarke.

Q. I wish to know if when you signed this paper you knew what it contained? A. Clarke's?

Q. Yes? A. I knew some part of it, I suppose.

Q. Tell us what part of it you knew? A. I suppose it was something concerning the affidavit made out while I was under arrest before Colonel Clarke. It was something concerning the White Brotherhood.

Q. You knew there was something concerning the White Brotherhood in it? A. Yes, sir.

Q. You have a distinct recollection of that? A. Yes, sir.

Q. Was there any coercion used on that occasion, or did you sign that paper freely, and without any threat, or any fear of any kind? A. I had some little fear about me at that time.

Q. Was anything said on that occasion to excite your fear? A. I was right smart excited at that time.

Q. I ask you if there was anything said by Col. Clarke there, or any other person present, to excite your fear, and if so, what did they say? A. They told me they wanted me to come out and tell them all that I knew about the concern.

Q. About what concern? A. About the White Brotherhood.

Q. Did they write down what you told? A. Yes, sir, I suppose so.

Q. As you repeated they wrote it down? A. Yes, sir.

Q. Then you didn't understand that it contained exactly what you stated when you signed it? A. I suppose I did.

Q. Was it not read over to you after it was written before you signed it, every word of it? A. I cannot recollect, sir, now.

Q. Give us your best impression about it? A. I cannot recollect whether it was read or not.

Q. You cannot answer that question yea or nay? A. I cannot.

Q. You cannot recollect whether it was read over or not? A. No, sir.

Q. Did you state on that occasion that you joined the Ku-klux about a year before, or White Brotherhood about a year before you signed that paper? A. I stated that I knew some little about it.

Q. Did you state on that occasion that about a year before

you joined the society called the White Brotherhood or the Ku-klux? A. Yes, sir.

Q. Was that the truth? A. Yes, sir.

Q. Didn't you state the place where you became a member? A. Yes, sir.

Q. Where was it that you became a member? A. It was out in a piece of woods where I stated, not far from home, about a mile from home.

Q. Between Fisher Clendenen and Alexander Wilson's? A. Yes, sir.

Q. You stated that? A. Yes, sir.

Q. That was the truth, was it? A. Yes, sir.

Q. And you say now it is the truth? A. Yes, sir.

Q. Did you state that Dr. Wilson, Tait Turner, Alexander Patton, senior, and Alexander Patton, junior, were present? A. Yes, sir.

Q. And were they present when you joined? A. I think they were

Q. State if, when you joined, the men that were present had on any disguises? A. They had not.

Q. Was any oath administered to you? A. There was some kind of a rhyme read over to me, but I could not recollect much about it after it was read over.

Q. You state here, and I want to know whether it is true, that "William Carr administered the oath to me?" A. Yes, sir.

Q. That is true? A. Yes, sir.

Q. And you now say it is true? A. Yes, sir.

Q. You state "I held my hand up when I took this oath?" is that true? A. I don't recollect about stating that.

The CHIEF JUSTICE. Did you hold up your right hand? A. I cannot recollect whether I did or not.

Q. You state here "to the best of my recollection I swore to fulfill and obey the orders of the officers of the society"—is that true? A. Yes, sir.

Q. "I was told that the object of the association was to keep

down stealing, and if any one, white or black, was caught stealing he was to be taken out and whipped?"—did you state that? A. I don't recollect about stating that.

Q. Do you recollect that that was so—whether you stated it. or not? A. No, sir, I don't recollect that that was so.

Mr. GRAHAM. I think the regular couse would be to read the paper and then see how his statements correspond with it.

Mr. BOYDEN. We have no objection to read the paper, but we have a right to cross-examine the witness according to our own taste, and not according to the taste of the managers.

Mr. MERRIMON. It is not a matter of taste, but a matter of law.

The CHIEF JUSTICE. You had better read the paper.

Mr. BOYDEN here read the paper signed by the witness in the presence of Col. Clark, of which the following is a copy:

I, William Patton, a citizen of the county of Alamance, state of North Carolina, do freely and voluntarily state that I became a member of the society called the "White Brotherhood," or Kuklux, about one year ago. I was made a member by William Kerr, in the woods between Fisher Clendenen's and Dr. Alexander Wilson's, Tate Turner and Alexander Patton, Sr., and Alexder Patton, Jr., were present. William Kerr administered the oath to me. I held my hand up when I took it. To the best of my recollection, I swore to fulfill and obey the orders of the officers of the society. I was told that the object of the association was to keep down stealing, and if any one, white or black, was caught stealing, he was to be taken out and whipped. This was at night, and they gave me one sign, which was pressing the thumb on the back of the fingers when shaking hands. I was told there were other signs, but it was not necessary to give them, and I never received them. I attended another meeting, something like three weeks after, near the residence of Dr. Alexander Wilson. There were present Dr. Wilson, Tate Turner, James Johnson, Levy Johnson, Michael Tear and others I cannot now remember. This meeting was at night and was held in a patch of woods in a

field. Wm. Kerr was the head man on that occasion. They called the meeting a "camp."

I attended another meeting, at night, in an old field near Tate Turner's. Nothing was done but talk a little. Jake Long was said to be the head man. I suppose that there were camps all over the county. William Johnson told me that he had taken the oath.

I disapproved of the organization and had as little to do with it as possible.

I knew nothing of the hanging of Outlaw and the drowning of Puryear, and was never present when any one was whipped.

WILLIAM PATTON.

Raleigh, August 5th, 1870.

Witness:

WM. J. CLARKE.

Q. I understand you to state then now that when you stated you joined this organization of the White Brotherhood or Ku-klux a year ago that is the truth? A. Yes, sir.

Q. You did join? A. Yes, sir.

Q. I understand you to say that you were made a member by William Kerr? A. Yes, sir.

Q. In the wood between Fisher Clendennen's and Dr. Wilson's—is that true? A. Yes, sir.

Q. I understand you to say that Dr. Wilson, Tate Turner, Alexander Patton, Sr., and Alexander Patton, Jr., were present—that is true? A. Yes, sir.

Q. I understand you to say that William Kerr administered the oath to you? A. Yes, sir.

Q. I understand you to say that whether you held up your right hand when you took it or not you do not recollect. A. I do not recollect.

Q. I understand you to say that you took the oath to fulfill and obey the orders of the officers of the society—is that so—is that true? A. Yes, sir.

Q. I understand you stated that if any one was caught steal-

ing, either white or black, he was to be taken out and whipped? A. I don't recollect about that, sir.

Q. You don't recollect whether it was so or not—you will not say it didn't? A. I cannot recollect saying so.

Q. You don't recollect is all you answer? A. Yes, sir.

Q. I ask you now if that was the fact? A. Yes, sir.

Q. Was that fact although you don't recollect saying it? A. I don't recollect saying it.

Q. That was the fact whether you recollect saying it or not? A. Yes, sir.

Q. You state that they gave you one sign—what sign was it that they gave you, just tell us—pressing the thumb on the back of the hand? A. I forget, sir.

Q. Pressing the thumb on the back of the fingers when shaking hands—did they give you such a sign as that? A. I cannot recollect whether they did or not.

Q. Did they give you any sign after this? A. I cannot recollect whether they gave me any sign.

Q. You say you attended another meeting near the residence of Dr. Alexander Wilson—is that so—did you do it? A. I met some of my neighbors there one time.

Q. You had a meeting where—where was it? A. It was close by there.

Q. In the woods or where? A. I think it was a patch of woods close by, sir.

Q. There was a patch of woods close by—were you in that patch of woods? A. I think I was in the edge of it.

Q. I will ask you why they held the meetings in the woods? A. I don't know.

Q. Was Dr. Wilson present at that meeting? A. I think he was at that time.

Q. Was Tate Turner present? A. Yes, sir.

Q. Was James Johnson present? A. I think so.

Q. Was Leroy Johnson present? A. I don't know a man of that name.

Q. Do you know Michael Tear or Fear? A. Yes, sir.

Q. Was he present? A. I suppose so.

Q. You recollect now that he was? A. I think he was.

Q. That meeting you state here was at night—is that so? A. Yes, sir.

Q. You state here they called the meeting a camp? A. I did. I cannot say it was any camp; it was no regular camp.

Q. You say it was called a camp—is it true that they called that meeting a camp? A. The regular meeting place I suppose they called the camp? A. I didn't attend them but three meetings, and then I quit off.

Q. Those that belonged to this particular camp—this was their camp? A. Yes, sir.

Q. You say here that you attended another meeting near Tate Turner's—is that true—did you do so? A. Yes, sir.

Q. Was that at night? A. Yes, sir.

Q. Was it in the woods or in an old field? A. In an old field,

Q. You state here that Jake Long was said to be the head man—is that so? A. I don't suppose so.

Q. What was said at the meeting? A. I don't recollect hearing them say anything that night.

Q. How many other camps do you know of in the county of Alamance. Just tell the number? A. I don't know of any more, sir.

Q. You know of only that one? A. Yes. sir.

Q. You state here that there were camps all over the county? A. I do not know as there was, sir.

Q. You state here that William Johnson told you that he had taken the oath—is that true? A. I don't recollect as he told me that he had taken the oath.

Mr. GRAHAM. We object to that—what William Johnson told him is nothing. This is hearsay altogether. If it is intended to prove that William Johnson was a member, prove it by somebody who knows. As to proving what William

Johnson said to him is precisely of a class of evidence which has been rejected. It is all hearsay.

The CHIEF JUSTICE. The presiding officer thinks where a communication is made by one member to another it can be proved. He thinks that is competent because it is carrying out, and in furtherance of a combination which has been proved.

Q. You state near the close of your affidavit that you disapproved of the organization? A. Yes, sir.

Q. Were you not afraid to break with it after you had joined? A. I was not.

Q. Why didn't you break it at once then if you disapproved of it, and were not afraid to break with the society—why didn't you do it at once the moment you disapproved of it? A. I didn't know anything about it.

Q. You don't understand the question—I understand you to say you disapprove of the organization—that is so is it not? A. Yes, sir, in a short time I quit off, and never had anything more to do with it.

Q. Did you quit off at once when you disapproved of it, and attended no more meetings? A. Yes, sir.

Q. You attended then but three meetings? A. But three meetings.

Q. Can you give us the time of the last one? A. No, sir.

Q. What hour in the night did these meetings take place as well as you can recollect the time? A. About dark.

Q. How long did they continue? A. For a short time.

Q. What was done or said which is not in this paper at the first meeting, do you recollect anything? A. I cannot recollect anything now.

Q. What was said or done at the second meeting that is not stated in your affidavit, do you recollect anything? A. I cannot recollect now.

Q. Then as to the second meeting? A. I don't think there was but very little said.

Q. Do you recollect what that little was now? A. I do not.

Q. What was the object of the meeting? A. As I understood it to protect ourselves and property against barn burners.

Q. [By the CHIEF JUSTICE.] What were you called there for?

Mr. GRAHAM. They were called there as I understand for the purpose of taking measures against barn burners and thieves.

Q. What were you called at this second meeting for? I do not know as I was called for any particular purpose. I went out to meet some of my neighbors there.

Q. Was anything said at the meeting why you were called there? A. No.

Q. I understand you to say that the object of the meeting was to protect yourselves against barn burners? A. Yes, sir.

Q. In what way did you expect to protect yourselves? If you suspected a man, were you to take him up and punish him by this society? A. No, sir.

Q. How then? A. We would try to find out about the barn burning and stealing, and report it to the justice of the peace and assist each other in that way. That was my understanding of it.

Q. Did you ever report any one to the justices of the peace? A. No, sir.

Q. Did you disapprove of reporting these things to the justice of the peace? A. No.

Q. What part of it was it that you disapproved of—was it the whipping them by the society if they were caught stealing? A. I disapproved such as that, but I never knew any whipping to be done.

Q. What do you mean by saying you disapproved of the whipping? A. I thought it was not right to do so.

Q. Was that a part of their object to whip men if they were caught in these crimes? A. I do not know whether it was or not.

Q. What do you mean, you disapproved of it. I cannot comprehend you. You disapproved of that part of it? A. If

there was any such thing belonged to it I disapproved it. I do not know whether there was any such thing done or not.

Q. What was it then that you disapproved of when you left? A. I got tired of it, and quit off.

Q. There was nothing in particular that you disapproved of? A. No. sir, nothing in particular.

Q. And do I understand you now to say that it was not a part of their object if they detected men in stealing and had the full proof of it that they were not to whip them—was not that a part of their object if they had full proof of it? A. I do not know that.

Q. Your recollection is not as good at this time as it was when you made that statement before Col. Clarke? A. I think it is as good.

Q. You said nothing then but what you recollected, did you? A. No, sir.

Q. I ask you now if you know of any person being chastised or whipped in the county of Alamance? A. I do not.

Q. How far do you live from Graham? A. Six miles.

Q. Have you any knowledge that any one of these camps decreed the death of Outlaw? A. I have not.

Q. Where were you on the night he was executed? A. I was home, sir.

Q. Were you at home all night? A. I was.

Q. Where were you on Sunday morning? A. I was out at church on Sunday morning.

Q. Where do you go to church? A. Haw Fields.

Q. When did you hear, and how soon after the death of Outlaw did you hear that he had been hung? A. Heard it at the church the next morning.

Q. Did you go to Graham? A. I did not.

Q. How soon after that did you go to Graham? A. I cannot recollect. It was some time after.

Q. How far do you live from where Puryear's body was found? A. One mile, about a mile.

Q. Whose mill pond was his body found in? A. In Dr. Wilson's mill pond.

Q. How far is Dr. Wilson's residence from the mill pond? A. About a mile.

Q. Is his house or the mill pond nearest to your residence? A. It is some nearer him.

Q. Is the mill pond or Dr. Wilson's house nearest to you? A. It is about the same distance I suppose.

Q. Did you see the body of Puryear? A. I did, sir.

Q. What was his condition—were you present when he was got out of the water? A. I was.

Q. What was his condition when he was taken out? A. In a very bad condition.

Q. State whether there was any rock tied to his feet? A. There was.

Q. How large was that rock? A. It was a very large rock.

Q. Give us an idea how large? A. I suppose the rock would weigh 15 lbs.

Q. Large enough to sink the body? A. Yes, sir.

Q. [By the Chief Justice.] Was it as large as this pitcher? A. Yes, sir.

Q. As large as a man's head? A. Yes, sir.

Q. It was big enough then to sink the body and keep it down? A. I suppose so.

Q. How long had Puryear been absent before his body was found—been missed? A. About two months, I think.

Q. How near did he live to this mill pond? A. Half a mile.

Q. His residence then was within half a mile of the pond? A. Yes, sir.

Q. Who else was present when he was taken up? A. Dr. Wilson, Fisher Clendennen, and Jack Woods, I cannot remember all their names. We had a jury of twelve men summoned.

Q. Had it been ascertained before you met there that his body was there? A. Yes, sir.

Q. And a coroners inquest had been summoned? A. Yes, sir.

Q. Were you one of them? A. I was one of them?

Q. You cannot recollect all the names that were present! A. No sir, I cannot recollect.

Q. Name just as many as you can recollect of the persons present? Who was the coroner? A. Viebbett Foust.

Q. Now begin with the jury? A. Fisher Clendennen, George Crawford, Jack Woods, Dr. Alexander Wilson, George Clendennen and Jasper Woods, I think. I don't know as I remember the others. There were twelve men present.

Q. Do you recollect the names of all of them—give us their names. I will give you time to think over? A. William Copps, I think was one of the others, sir.

Q. You have answered that you joined this society—did you ever see any of them with disguises on them? A. I never did.

Q. On no occasion? A. No, sir.

Q. I understand you to say you never saw any persons after they had been whipped, with marks on them? A. I never did.

Re-Direct Examination.

By Mr. Merrimon:

Q. Who wrote that paper [the one already produced and signed by witness]? A. I think Mr. Clarke wrote it.

Q. Did he write it at your request, sir? A. No, sir.

Q. Was he your counsel? Had you employed him as your counsel? A. I had not.

Q. Did he ever do any business for you before that time? A. No I think not.

Q. He was a military man at that time? A. I think he was.

Q. Commanding troops? A. Yes, sir.

Q. If you had had your choice would you have selected him to write your statement? A. No, sir.

Q. Did you say a while ago that Mr. Douglas wanted you to sign a paper? A. Yes, sir.

Q. Did he or did he not ask you to say that you were not hanged? A. He asked me to say something about that. He asked if I was hung up off the ground, and I told him I was not pulled off the ground.

Q. Did he ask you to sign a paper to that effect? A. He wrote out a paper, I think he asked me to sign it to that effect.

Q. Did you sign it? A. I don't recollect about signing it.

Q. Was there a guard there at that time? A. Yes, sir.

Q. That paper that he presented to you, did it state whether you had been hung or otherwise? A. It stated that I had been hung.

Q. Did it state that you had been hung, or that you had not been hung? A. I said that I had been hung.

Q. Was it that way when he asked you to sign it? A. That was my understanding.

Q. I understand you to say that you signed any paper that they presented to you? A. Yes.

GEORGE S. ROGERS, *a witness called on behalf of the Managers, being duly sworn, testified as follows:*

By Mr. Merrimon.

Q. State to the court your name, age and residence? A. George Rogers, 20 years old, I live about three miles out of Graham.

Q. What is your business? A. Farming.

Q. State whether at any time during the year 1870, if you saw any armed men, if you say you did, and they arrested you, what you know of any such arrest? A. I saw some on the 26th of July at Graham.

Q. Describe what they did, and who they were? A. There was 10 men including two colored men.

Q. Were they armed? A. Yes, sir, they were all armed, all had their muskets, except one, Aleck Ruffin, and he had

pistols. He had had a gun, and had given it to his brother, I think, Henry Ruffin.

Q. Were they in uniform? A. All but one.

Q. Were the negroes in uniform? A. All but one nigger.

Q. State what they did to you? A. Aleck Ruffin came up to Mr. Hanna's and asked if I was there, and some one remarked that I was. The white men had gone past the door, and he ran down and told them I was in the store. They came back and Lieutenant Hunnicutt rode up to the door and asked me my name. I told them, and he said I must consider myself under arrest. I said "all right." He told me to go along with these men. I asked him where he wanted me to go; he said he wanted me to go into the country a piece. I went along with them. I asked him if they would let me ride, and he told me he would. I asked him what authority he had to arrest me; he said he was acting under orders of the Governor of the State; that he was acting under the orders of Burgen and Burgen was acting under orders of the Governor. They carried me all over the south part of the country. I suppose I rode fifty miles that day. Between nine and ten o'clock we got to Company Shops; I stayed there until the next day, at ten o'clock, when Burgen asked me to come into his tent. I went with him; he asked me if I knew anything about the hanging of Outlaw; I told him I did not, and he told me it was a d——d lie, that I did, and then he asked me if I didn't know that Adolphus Moore hung Outlaw. I told him I didn't know, and he called me a d——d liar again, and he told me to go back to my tent, and said he would give me till ten o'clock that night to tell about it. I went back in the tent and stayed there until about ten o'clock that night, when he came there and called me out again to his tent, and he told me I must confess who hung Outlaw; he says I know you were one; we know that Adolph Moore and Jim Hunter were others in the party who knew about it. I told him I did not. He said Patton didn't know anything about it until he was hung, and if I didn't tell he would hang me. I told him I didn't know anything about it. He picked up a

pistol and called for a rope, and there was a man standing in the door—I think it was Hunnicutt—who handed him a rope. I stepped outside of the tent, and he put the rope around my neck, and led me down some seventy-five yards to a piece of woods.

Q. Were they armed men? A. Four armed men, Bergen, Hunnicutt, and two other men. He threw a rope over a limb and ordered the lieutenant to pull me up. He pulled the rope until it was fetched tight and choked me. He didn't pull my feet quite off the ground. He held it about a minute and a half, and he told the lieutenant that that would do, and the lieutenant let the rope slack. He asked me if I would tell. I told him I knew nothing about it at all. He then made some threat that if I didn't tell he would shoot me. I told him I didn't know anything. He then let the rope down, and on the way back he said "I believe you are telling the truth," or something that way, and he would do all he could to release me, but he could not do so, as he was acting under orders of the Governor. I stayed in the camp then until the 3d day of August, when we started for Yanceyville.

Q. Who told you that—Bergen? A. Yes, sir, they started the third day for Yanceyville, and went over to Moore's store and stayed all night.

Q. Where was that? A. At Moore's store. There was some men who wanted to stay there until the polls were opened and vote, but he would not let them stay.

Q. Was that in Alamance county? A. Yes, sir, we got to Yanceyville that evening about two o'clock, and we were put into a room and kept there till we were brought back to Company Shops. I don't recollect the day.

Q. What was the condition of the weather when you got back to Company Shops? A. It was raining. We were put in the tent.

Q. What sort of a tent? A. Small tent. There were some 8 or 10 of us in the tent.

Q. Where did you go for a place of shelter? A. We were

in an old field under the tent. We were carried to the court house at Graham, and from there we were brought to Salisbury before Judge Brooks on the 19th of August, and he released me.

Q. Had you done any crime? A. No, sir.

Q. Did you see the troops? A. Yes, sir.

Q. Did they offer any evidence against you at Salisbury? A. No, sir.

Q. They had no charge against you? A. None at all.

Q. State a little more fully if you can, what he said about hanging Patton? A. He said that he had hung Patton up three times. He told me that in the old field, and the last time he said he hung him until he was dead, till he fell and was not able to stand. I was told that by three of his men afterwards.

Q. Did he state whether Patton had made any confession or not? A. He told me that Patton knew nothing about it till he was hung, and then he could tell all about it.

Q. Did you see much of the troops? A. I suppose I saw nearly all of them.

Q. Describe to the court their discipline and demeanor towards each other and the officers, and all you know about them? A. They cursed the officers just the same as they would each other. There was no discipline at all. They were hallooing and hooting all the time they were on the post.

Q. What sort of a looking body of men were they? A. They were a bad looking set and mighty ragged when they came. I saw a good many of them when they drawed their clothing. They didn't hardly have clothing on enough to hide themselves, and they were nearly all barefooted.

Q. How old were they? A. Some boys looked to be 15 or 16. I saw some who looked as if they might be old men about 60 or 70. Their heads were right white, some of them.

Q. State to the court whether or not you saw any squads of men leaving the camp and returning? A. I did.

Q. State whether they were white or black? A. Some were white and some were black.

Q. When they returned did they bring any one with them? A. Sometimes they would.

Q. State whether or not it was usual to have black men along with these squads? A. Nearly always one or more.

Q. Do you know whether these squads went over the county or not? A. Only hearsay.

Q. That day that they rode with you what did they do? A. They were hunting other men.

Q. Where did they go? A. In the first place they went to Mr. Foust's.

Q. Did they take anybody there? A. No, sir, Mr. Foust was in his room asleep, and his folks didn't know where he was.

Q. Where did they go then? A. They went into Jasper Wood's, and carried me along.

Q. What did they do then? A. They went to Foust's mill and got a man to put them across the river in a boat.

Q. Did they arrest anybody there? A. No, sir.

Q. What did they go there after? A. They went across the river.

Q. What did they do across the river? A. They started to to Henry Thompson's, the nigger pretended that he knew the way, but he went up to Mr. Allen's—not quite to the house—and I asked him what Thompson it was, and he said Henry. I told him it was not the way there and told him the way; and then we went down to the house.

Q. What did they do with Henry Thompson? A. They inquired for his son Mike, and he was not at home.

Q. What did they do next? A. They went up to Dr. Wilson's and arrested Tate Turner and Dr. Wilson there.

Q. These men that they arrested did they take them along? A. Yes, sir.

Q. Where did they go from Wilson's? A. To Jack Thompson's,

Q. What did they do with him? A. He was not at home. They sent after him. They carried him along, and then went on to the Shops.

Q. What did they do then? A. They took all these men in and put us in a tent.

Q. Were they polite to these men? A. Yes, sir, they were polite. They treated them very well. They treated me very well that day.

Q. How long did they keep you in the court house at Graham? A. I don't recollect. I was there until the 18th of August, when we started for Salisbury—from the time we came back from Yanceyville.

Q. How far do you live from Graham? A. Three miles.

Q. Do you know whether there was a company of federal troops there? A. Yes, sir.

Q. When did they go away? A. They came there about the 1st of March, and never left until after the militia went away.

Q. A company? A. Yes, sir, there was a company, I don't know how many men—about 60 or 70 men.

Cross-Examination.

By Mr. Boyden.

Q. Where do you live? A. I live about three miles south of Graham.

Q. Will you tell us whether you recollect the night on which Outlaw was executed? A. Yes, sir.

Q. Tell us where you were that night? A. I was at home.

Q. Were you at home all night? A. Yes, sir.

Q. What time did you hear that he had been hung? A. The next day about 12 o'clock.

Q. When you heard that did you go to Graham? A. Not at that time. I went up in the evening.

Q. Did you see the body of Outlaw? A. I did not.

Q. What time in the evening did you go? A. I got there about three o'clock—I suppose about that time, it may have been later.

Q. Whom did you see there? A. I met Mr. Foust, who had been there, and who said Wyatt had been buried or carried off.

Q. I ask who you saw in Graham? A. Mr. Foust and two or three others. I saw Wylie Neese and George Steele.

Q. Did you have any talk with anybody else? A. No one else.

Q. Where did you stop? A. I stopped about 100 yards from the court house. I met them, coming out, and went back with them.

Q. Do you know anything about a secret organization—any political organization by the name of the KuK-lux klan, White Brotherhood, Constitutional Union Guard, Invisible Empire or any other name? A. I know of one.

Q. Tell us all you know about it—what is it? A. I know one by the name of the White Brotherhood.

Q. Are you a member? A. Yes, sir, I was.

Q. Tell us when you joined? A. I don't recollect the date, but I think it was in 1868.

Q. Where did you join? A. Joined in an old field near Maria Foust's.

Q. Who was present when you joined? A. I do not know the men who were present. They were all in disguise.

Q. You don't know any of them? A. No.

Q. Have you no idea who they were? A. No.

Q. You didn't know any of them? A. No.

Q. How many were present? A. I think there was four.

Q. And you joined them? A. I joined them.

Q. How did you join, what was done to make you a member? A. They administered an oath to me.

Q. Did you hold up your hand? A. Yes, sir.

Q. What sort of an oath did they administer? A. Before I went into it I inquired——

Q. What oath did they administer to you? A. They administered an oath that I would never reveal the man's name who initiated me, and that I would obey the officers of the

command as far as I was able. That was about the substance of it.

Q. What was to be the penalty if you didn't do this? A. No penalty that I heard of.

Q. You only took a solemn oath to do it? A. Yes, sir.

Q. I ask you now how you knew where to meet them—did you know any one that was there? A. I went with a man there.

Q. Who was that? A. Mr. John R. Stockard.

Q. Then you knew one man that was present? A. He was not present.

Q. You say you took an oath not to divulge the name of the man who swore you in? A. Yes. sir.

Q. Why did you take that if you admit you didn't know who he was? A. I suppose if I had had a suspicion who he was, or knew his voice, I would know his name.

Q. Did you tell the court that you had no idea? A. I had no idea.

Q. You can tell men by their voice? A. Yes, I can tell some men by their voices, but I was not familiar with his.

Q. Do you know now who it was? A. I do not.

Q. What sort of disguises did they have on? A. They had on white disguises.

Q. What about the face? A. They had on a sort of smooth face—a cap or some sort of——

Q. Was there any thing sticking up like horns? A. Some of them had.

Q. How many had them that way? A. I think one or two.

Q. Did you ever attend any of their meetings? A. I attended two others.

Q. Tell us the next meeting you attended? A. I attended a meeting at the school house.

Q. What school house? A. Known by the name of Holt's school house, near Col. Holt's.

Q. Near Colonel Holt's, the gentleman who was sworn here the other day? A. Yes, sir.

Q. Who was present at that meeting? A. Mr. Anthony's three boys were there—know only two of them.

Q. Who else? A. Two of Mr. Whitsell's sons were there.

Q. There were only four besides you? A. Yes, sir.

Q. How happened you to know of the meeting? A. The meeting was appointed to get more members.

Q. How did you happen to know of it? A. I don't recollect exactly, I was informed by somebody.

Q. Was it in the night or in the day that you were notified of the meeting? A. I don't recollect whether it was the day time or not. The meeting was held at night.

Q. You don't know who notified you? A. I do not.

Q. What time was that meeting, in the day or in the night? A. In the night.

Q. What hour of the night, as near as you can recollect? A. About half past 7 o'clock.

Q. What time in the year? A. In the fall of the year.

Q. What time in the fall of the year? A. Before christmas. I don't recollect exactly when.

A. After you met what took place—what was said and done? A. They expected more members, but they did'nt get any one else, and there was nothing at all done.

Q. How long did you continue together? A. About half or three quarters of an hour.

Q. Tell us everything that was talked over there? A. I don't recollect anything being said that night only concerning getting in more members. That was the substance.

Q. What did you want more members for—was anything said about that? A. Nothing was said about that.

Q. You did'nt know what they wanted them for? A. They wanted to make the organization as strong as it could be.

Q. What camp did you belong to? A. I didn't belong to any particular camp at all.

Q. Did'nt they have particular camps? A. Not that I know of.

Q. Where was your next meeting? A. About a mile and a half from Graham—about two miles I guess.

Q. At what place? A. It was at the forks of the big road.

Q. In the woods or in the road? A. In the forks of the big road. We went a piece off into the woods.

Q. Did you have any light? A. I think not.

Q. You had no light? A. No, sir.

Q. Tell us how many were present at that meeting? A. I suppose 15 or 20.

Q. Tell us the names of as many as you can recollect? A. Mr. Curtis was there.

Q. What Curtis? A. Clem Curtis.

Q. Who else? A. John Stockard.

Q. John R. Stockard? A. Yes, sir, Jasper Wood, Jacob Long, Henry Albright, Jacob Michael. I do not recollect the names of any others.

Q. You cannot recollect any others? A. No, sir.

Q. We have got but six names—you said there were 15 or 20. Did they have on disguises? A. There were one or two men disguised there.

Q. Did not they all have on disguises there? A. I only saw one or two with disguises, it may be three or four—I would not say positively.

Q. There was not more than four that had on disguises? A. No, sir.

Q. Tell us all that was said at that meeting? A. There had been some whipping going on in the neighborhood. It was alleged to have been done by that party, and the meeting was to put it down if it was that party, but there was no evidence of it.

Q. And you were going to inquire into it? A. Yes, sir.

Q. That was the sole object of the meeting? A. Yes, sir.

Q. You talk about nothing else? A. Nothing else.

Q. Tell us the name of every man in the county that you know to your own personal knowledge belonged to this organization. A. Mr. Jacob Long, Mr. Clem Curtis, John

Stockard, George Anthony, Daniel Anthony, Daniel Anthony again, Joseph Wood, Henry Albright, Jacob Michael, Robert Hanna. I don't recollect any others.

Q. You state that that is all the names that you recollect belonged to this organization in the county of Alamance? A. That is all.

Q. At these meetings when you were together did you hear it said how many there was in the county belonged to the organization? A. I did not.

Q. With what political party do you co-operate? A. The conservative party, but I am not old enough to vote.

Q. How old are you? A. 20 years old.

Q. Do you know of any scourging that took place? A. I do not.

Q. Do you know of any one being sentenced at any one of these camps to receive a whipping or any other punishment? A. I do not.

Q. Who received whippings or anything else? A. I do not.

Q. Have you any knowledge of the persons who were engaged in the hanging of Outlaw? A. I do not.

Q. Do you know of any one that was engaged in the drowning of Puryear? A. I do not.

Q. Did you hear the firing of any guns towards Graham on the night Outlaw was hanged? A. I didn't.

Q. What time did you go to bed that night? A. About 8 o'clock.

Q. What month was it? A. I think it was in February. I don't recollect.

Q. Do you know Caswell Holt? A. I do.

Q. Do you know anything about his being whipped? A. I do not.

Q. How far does he live from you? A. At the time he was whipped he lived about three miles from me.

Q. Did you see him shortly after he was whipped? A. I did.

Q. How soon? A. Some five or six days.

Q. Did you see any marks or stripes on him? A. I did not.

Q. You didn't examine his person? A. I didn't.

Q. Did you see him after he was shot? A. Not until some time afterwards.

Q. How soon after? A. Two or three months afterwards.

Q. Did you see the wound? A. I did not.

Mr. MERRIMON. I object to this as it has never been proved that Caswell Holt was shot.

Q. Have you any knowledge that he was shot? A. I have no knowledge of it.

Q. And you didn't see the wound? A. I did not.

Q. At the time you say there was a meeting, and there were four men in disguise—was there anything said on that occasion about whipping Caswell Holt? A. Nothing at all, sir.

Q. Can you tell why they happened to have on disguises when the others were there without? A. For the purpose of taking in more members.

Q. When they took in anybody these persons were always disguised? A. I do not know that they were always so. When I was taken in they were.

Q. Do you know why the men that took them in wore disguises? A. Yes, sir.

Q. Tell us why? A. The object was if any one came up and refused to go in why they would not know who belonged to it.

Q. What objection had they to having it known? A. I don't know the objection.

Q. I believe you answered the question you didn't know how many camps there were in the county? A. I do not.

Q. Who was the head man of this camp to which you belonged? A. I belonged to no particular camp.

Q. Who seemed to be the commander? A. Mr. Jacob Long.

Q. Mr. Jacob Long appeared to be the commander of that squad in which you operated? A. Yes, sir.

Q. Have you any personal knowledge who was the head man of the county? A. I have no personal knowledge.

Q. Have you any personal knowledge who was the head commander in the state of North Carolina? A. I have not.

Mr. GRAHAM. The decision of the senate confines this inquiry to the two counties of Alamance and Caswell. The question assumes that the organization existed over the whole state. There is no proof that it did or there was any head to it at all.

Re-Direct-Examination.

By Mr. MERRIMON.

Q. When did you join this organization? A. In 1868.

Q. What was the object of the organization? A. For the protection of the members interested.

Q. How protection? A. There were outrages committed all over the county in different parts, and they were assisting to put them down.

Q. What sort of outrages? A. Rapes, barn burning and everything.

Q. This organization was gotten together in order to put that down. A. Yes, sir.

Q. What were the ages of the men that were there that you speak of? A. About 20 or 21.

Q. Young men? A. Yes, generally. Some of them were old men.

Q. They were generally young men? A. Or middle aged men. There were men of nearly all ages, but no right old men. The majority of them were young men from 20 to 25.

Q. Were you brought to Raleigh? A. I was not under guard when I came here. I came down here after I was released from Salisbury.

Q. You didn't come down here before that time? A. No.

Q. State whether there were any other secret organizations in the county of Alamance besides this White Brotherhood? A. I think there was no other.

Q. You said something about the meeting at the forks of the

road. I wish you to repeat what you said about the object of that? A. It was alleged that our party was doing the whipping, and we went to break it up if it was so.

Q. It didn't appear that it was the White Brotherhood who were doing the whipping, therefore no action? A. No, sir, no action was taken.

JEREMIAH H. ALBRIGHT, *a witness called on behalf of the Managers, being duly sworn, testified as follows:*

By Mr. MERRIMON.

Q. State your name, age and residence? A. My name is Jeremiah Albright. I am twenty-three years old the nineteenth of next November, and I live eight and a quarter miles west of Graham.

Q. What is your business? A. I am a farmer a part of the time, and the rest of the time I work at blacksmithing.

Q. Note whether at any time during the year 1870, you saw any armed men in the county of Alamance and if you did, state whether they did anything to you and what it was? A. I saw armed men, both black and white.

Q. Describe them, their number and appearance? A. I don't know how many there were, but there was a right smart body; there were some ten or twelve dressed in uniform clothing from Company Shops. Three of the black ones and three of the whites came up and arrested me.

Q. Where? A. I was at Barbara Bason's, four miles this side of the Haw river.

Q. Four miles east of Haw river? A. Yes, sir, I was there with a thrashing machine. I came there between eleven and twelve o'clock at night, after they said they had orders to take me under arrest. They surrounded the house. I was asleep in the loft and they called for that g—d d—d Albright in there. They said he was in there and if I did not come out they would put a ball through me in three minutes. As soon as I heard this, I asked them if they would let me put on my clothes and they said, "G—d d—n you never mind your clothes."

I started and went down to them, they asked which was Albright, I stepped out myself, two of the black ones cocked their guns and said if they had their way they would shoot my heart out. Then the sergeant, named Wiggins, jerked a revolver out and cocked it and swore that if I said one word he would shoot my g—d d—n heart out right where I stood. I did not say any thing—I didn't think I would dare to speak to him after he had forbidden me.

Q. Had you put on your clothes? A. I had got on my pants and one of my boots, and the other I held in my hand. Then one of these niggers, Barnhill was his name, said "G—d d—n him let us hang him; that is the orders we have got" and then he called for a rope. There was none of them had a rope and there was no one who lived there that made any answer. Then he repeated again and said g—d d—d you have you got any plow lines about here. Still there was no person answered. Then he said, have you got any gun strops. He swore he would hang me with that. They got a gun strop and came and tied it around my left arm and then around my right arm, tied my arms back and then said that he had orders to get me dead or alive and to get my revolver. They said I had a revolver, and that I had said I would shoot any one who arrested me, and he demanded that. I told him I did not have any. In fact I did not have any. They searched for the revolver in the satchel that I had along with my clothes in, and which I had taken with me in going about with the machine. He called for that and it was handed to him, and they searched for the revolver until they were satisfied. He then swore that I had thrown it out, and I told him I had not. He said he had orders from the governor to take my body and that pistol and box it up and send it to him. I told him I would give the pistol to him if they would let me go and get it. I told him that my father had a pistol at home, and if they would let me go and get it I would do so. He said I must send for it; I told him I could not send unless he gave me a chance, and then he said he would hang me on an elm tree in the yard if I

did not get the pistol. Then Miss Bason asked them not to hang me in the yard, but to take me somewhere else and hang me. He said he would not hang me inside, but said he to her, "G—d d—n you, I ought to hang you for having "such a g—d d—n set of scoundrels in your house, and "I have a g—d d—d good notion to burn your house for I be-"lieve you have got some other d—d rascals in there." He then told me to march out in front and I walked out. They had my arms tied on my back, three men, one on each side of me marched with me with their guns cocked, and they said if I made one step out of the way they would shoot me down; that they were afraid I was going to get away. I told them that they need not be uneasy to shoot, that I had done nothing to try to get away, and for that reason I did not want to get away, and that I would go anywhere he wanted me. He marched me that way tied, until near Haw river between three and a half and four miles. Then he untied me. They had some other prisoners that they had got and they said they tied me because I had tried to get away. I had come over there with that thrashing machine and they supposed that I had come there to try and run away. He said these other gentlemen had acted like gentlemen, and he had treated them like gentlemen, but I had acted like a d—d rascal and he would treat me like a d—d rascal. That was the orders he had; on going along, Alfred Barnhill stated that if I had not run off and put them to so much trouble the sergeant would not have been so hard upon me.

Q. Who was the sergeant? A. His name was Henry Wiggins. He was one of Kirk's militia. I told him I had not tried to get away, that I had promised to go with the machine that evening, that I was hired as a hand to go along with it and that I went off to do my work according to the promise which I had made. After I went four miles, he said he would untie me and give me a chance; but if I started he would have balls into me before I got many steps. He then carried me across the river to Mr. Dixon's and got some liquor.

They had some whiskey. He made them drink some whiskey.

Q. Who did that? A. The sergeant at Ed. Dixon's, a half mile the other side of Haw river. Then we went back by the way of Graham and went to Red-eyed Bill Albright's, and he called him out and told him he wanted some of his best brandy, and he made him go into the cellar and draw some brandy and bring it out and he made them drink it. He then carried us to Graham station, and when the train came he made it stop and put us on the train and carried us to the Shops, and from there he took us to the camp and carried us to Lieutenant Hunnicutt, who told him to take us out and put us into the bull pen where the balance of them were.

Q. Was any thing said to you about a gun that they had along with them? A. Yes, sir, this Alfred Barnhill had a short gun. He came up to me and showed it to me, and he said "we have got the king, and here is his gun," and he showed it to me. "He said the load is in it that he put in. They "were going to shoot us and g—d d—n you if you try to "get away I will give it to you." He had it cocked and held it in his hand.

Q. Who was the king? A. Mr. Turner. He said he was king of the Kuklux.

Q. He said they had the king? A. Yes, sir, and that this was his gun.

Q. Was this Barnhill a black man? A. Yes, sir. He was the first who ordered them to hang me.

Q. Now we will come to the time you were in camp? A. He marched on Tuesday morning about day light, starting from the camp at the Shops and kept going until between four and five o'clock. He started with us for Yanceyville—five of us. That night we staid at Moore's store. The next morning we started and went to Yanceyville and got there just before night. They carried us to the court house and put us in the clerk's room and kept us all there until the next evening, I suppose about five o'clock, when we left Yanceyville and they carried us then back to Company Shops.

Q. What was done with you then? A. He kept us there in the camp at Company Shops and then carried us the next evening and put us in a box car on a train and carried us to Graham and put us in the court house, and they kept me there until that day week, which was Monday night. Then they carried us to the depot and put us on a train and brought us here on Monday night

Q. You were brought to Raleigh? A. Yes, sir, was brought on here.

Q. What was done with you? A. I was brought before Judge Brooks and released.

Q. Was any evidence brought against you? A. No, sir.

Q. Were you charged with any crime? A. No, sir.

Q. Were you discharged? A. Yes, sir.

Q. While you were at Graham court house was any prisoner put in jail? A. Yes, sir, Daniel Weeden, Frank Wylie, Tom Gray and Josiah Turner.

Q. [By Mr. Smith.] Do you know that? A. I saw them taken away and I saw them go in the jail. I never saw anything more of them until they started for Salisbury.

Q. Did you hear the soldiers say they put them in jail? A. Yes, sir.

Q. Do you know Daniel Weeden? A. Yes, sir.

Q. Where is he? A. I don't know. I have not seen him since the militia left but once. I saw him once at Graham.

Q. Then you don't know where he is now? A. No, sir.

Q. When were you first arrested, before or after the election? A. On Monday morning before the election.

Q. Do you recollect the date when Judge Brooks discharged you? A. I think it was the 24th day of August.

Q. Describe the troops you saw, what sort of men they were as to discipline? A. I don't know whether I hardly care or not.

Q. Were they good looking or bad looking, well behaved or badly behaved? A. I did not see but one or two good looking men in the crowd, and I did not see any that behaved well.

Q. What do you mean by behaving well? A. They were cursing about, going on abusing one another. They did not obey their officers, and they abused the prisoners by talking at them.

Q. Cursing the prisoners? A. Yes, sir, of course they did.

Q. Often? A. Yes, sir, every day, more or less, and every hour in the day.

Q. Who cursed the prisoners, the officers or soldiers? A. Both.

Q. Did the black men curse them any? A. No, sir, I did not hear the blacks once curse the prisoners after they were carried into the camp.

Q. [By Manager Sparrow.] Did they curse them before? A. Yes, sir, they cursed me and all the rest the night they arrested me.

Q. State whether any rocks were thrown into the court house at Graham? A. Yes, sir.

Q. Were you in the court house under guaid at the time? A. Yes, sir, I was standing in the room when Captain Franklin threw a rock in the window at Adolphus Moore, it went over my head and fell on the floor.

Q. He was a captain in this army? A. He was ranked as a captain. A man by the name of Wilson, who was the color-bearer, threw one at Adolphus Moore, and then he got a gun and came to the head of the stairs to the guard and swore that he intended to shoot him the first sight he got on him. He stood there some fifteen or twenty minutes with his gun cocked and no person said anything to him or made him go away.

Q. Where was Kirk and Burgen then? A. Down in the court house. We were up stairs in the court room and they were below. Captain White, I think, was the man who made Wilson come down with his gun. He went down, put his gun away and got his pistol and went on the north-east corner of the court house, which was the room that Moore was in, and

he stood there again with his repeater cocked for a half an hour and said he was going——

Q. [By the Chief Justice.] What was he going to shoot him for? A. I did'nt hear any reason given at all.

Mr. MERRIMON. Mr. Chief Justice, we desire to raise the question whether it is a part of the duties ef the presiding officer to examine witnesses.

The CHIEF JUSTICE. The presiding officer has no purpose to examine witnesses any further than to have them understood.

Cross-Examination.

By Mr. BADGER.

Q. How far were you standing from Adolphus G. Moore when they threw the rock at him? A. I was some seven or eight feet—I think it may have been eight or ten feet. I was in the jury room up stairs. I was just inside of the door a few steps and he was standing at the window looking out.

Q. Did you hear him make any remark just before that? A. Who?

Q. Adolphus G. Moore? A. No, sir.

Q. Was he standing looking out? A. He was standing looking out of the window.

Q. He was silent? A. I did'nt hear him say anything,

Q. Did you not hear him make any remark? A. No, sir, I did not. He may have made a remark but I did not hear it.

Q. Were you where you could have heard it? A. Yes, if I was paying attention.

Q. Were you paying attention? A. No, sir, I was talking with another man—me and another person were standing together talking.

Q. You don't know whether he made any remark to the men outside or not? A. No, sir, I do not.

Q. Did you hear any remark made by those who threw the rock? A. No, sir, I did not hear any.

Q. Did you see them throw the rock? A. No, sir, I saw it come through the window.

Q. Did that man stand on the staircase silent who had the gun cocked? A. I heard him say that if he saw Moore come to the door he would shoot him down.

Q. He did not give any reason for that? A. He might have given a reason for it but I did not hear it.

Q. You did not hear Adolphus G. Moore say anything to any body outside who threw rocks and you did not hear the man who came and cocked his gun or pistol give any reason why he would shoot him? A. No, sir.

Q. Were you where you could have heard? A. I suppose I could have heard if I had been paying attention.

Q. Were you not paying attention to a man who was standing with a gun threating to shoot? A. Not when he first came.

Q. Were you at any time paying attention? A. No, sir, I came out of the room where I was standing and I saw the man standing there with his gun cocked, I heard him say he was going to shoot that G—d d—d Moore the first sight he got. I went back and shut the door because I did not want to see him shoot him.

Q. What part of Alamance do you live in? A. Right in the upper edge.

Q. Did you belong to the White Brotherhood? A. Yes, sir.

Q. To what camp? A. I don't know.

Q. Who was the chief of that subdivision. A. I did not belong to any regular camp, I never went to a camp but twice after I was initiated.

Q. You did not belong to any regular camp? A. No, sir.

Q. You were a member of the White Brotherhood without belonging to a camp? A. Yes, sir.

Q. But you went to the camp? A. I went to the camp twice in which I was initiated.

Q. What was it? A. The camp above Graham. I don't know the name.

Q. Who presided at the meeting? A. I don't know.

Q. Were the men disguised? A. Yes, sir.

Q. In what sort of disguise? A. They had on white gowns.

Q. Any thing else? A. No, sir. They had a false cap on over their faces.

Q. You did not know any of them? A. No, sir.

Q. You did not know any man there? A. No, sir, every one I saw was disguised.

Q. How were they disguised? A. I was told.

Q. Who told you? A. Daniel Anthony's son.

Q. Which son? A. Daniel.

Q. He told you what? A. He told me that if I wanted to see them, if I would come to that place I could see them.

Q. Is that all he told? A. Yes, sir.

Q. Did he tell you he was a member? A. No, sir.

Q. What did you see when you went there? A. I saw these men.

Q. These disguised men? A. Yes, sir.

Q. How did you get where they were? A. I walked there.

Q. Were there any sentinels put outside? A. They told me what place to go to.

Q. Who told you? A. Anthony's son.

Q. When was that? A. I don't remember exactly when it was.

Q. About what time? A. It was in 1868 I reckon.

Q. The fall, spring or winter? A. It was in the winter.

Q, Where was the camp? A. It was above Graham.

Q. Was it the latter part of the year 1868? A. Yes, sir, it was very late in the year, towards the latter part.

Q. Where did you say the camp was? A. Above Graham—west of Graham.

Q. On whose land? A. I don't know whose land it was.

Q. How were you directed to get to it? A. I was directed to go to that place in the woods. There was a road that went through the woods—a country road.

Q. What road? A. I cannot give any description.

Q. How did you tell—describe the place how you were to

find it? A. By a road that run through that piece of woods to a certain field.

Q. What field? A. A road between widow Rich's field and Colonel Holt's, near the school house.

Q. Were you challenged by any one as you approached? A. There was one of the disguised men with me.

Q. Where did you meet him? A. He met me near there.

Q. What did he say to you? A. He wanted to know what I wanted and what I was doing there, what I came there for.

Q. What did you tell him? A. I told him I came to see him.

Q. What did he do then or say? A. I don't remember what else he said.

Q. Did he ask you if you were a member of the White Brotherhood? A. No, sir.

Q. He did not ask you that question? A. No, sir.

Q. Did he ask your name? A. No, sir.

Q. Did he say he knew who you were? A. No, sir, he did not.

Q. What took place? A. He carried me—he asked me what I came there for, I told him I came to go with him. We went a little piece then, and there was some more disguised men.

Q. How far did you go? A. Fifty or sixty yards I reckon and they came and stood around me.

Q. How many of them? A. I don't know, I suppose five or six.

Q. All disguised? A. Yes, sir, I did not see any others.

Q. What did they do? A. They asked me what I came for and I told them I come there to be a coming. They wanted to know what my object was, I told them I came just to see them, that I heard they were going to be there. They asked me if I wanted to join them, I told them I did not hardly know. They said if I did to tell them. I told them if there was no harm in it. They said there was no harm in

it, no danger. Then they come over some few words to me of an oath.

Q. Were you a member of the organization before that? A. No, sir, I never was.

Q. Did they put a rope around your neck? A. No, sir, they never touched my neck and they did not make any threats.

Q. Did they administer an oath? A. I don't know what they called it, but they come over some words as I have described.

Q. What were they? A. I cannot tell—I cannot memorize them, it has been so long.

Q. Did you hold up your right hand? A. I don't remember.

Q. Did they give you any sign by which you would know the Kuklux, or any sign or word of distress? A. No, sir.

Q. Did they say anything about "Shiloh?" A. No, sir.

Q. What was done after they had gone through those words? A. There was nothing more done. They told me I could go home, and they told me I should never tell anybody.

Q. What was the nature of the obligation you took? A. The meaning, as I understand it, was of the words they come over, that if any one did any crime, or anything that deserved any punishment and the law did not take hold of them, then it was necessary to do something with it. That was about the substance of what I read.

Q. What was? A. What I told you.

Q. What was the last part of it, I did not hear you? A. If there was any rapes committed, or anything burnt, or any one abused in any way, and the law did not take hold and do anything with them, then it was necessary to take it in hand, and see whether there would be anything done with it or not.

Q. Was any part of the oath binding you to obey the officers of the company. A. There may have been, but I don't recollect. I don't memorize it now.

Q. Were you told who the officer was? A. No, sir, I was not told any person's name.

Q. Were you told that there was no danger in the thing because you would be protected in the court house by false swearing? A. No, sir, I was not.

Q. You are certain that was no part of the obligation? A. Yes, sir, I am.

Q. Was it any part of your obligation that you were to be the law to yourselves in case the civil laws did not punish crime? A. No, sir.

Q. You say that if the court did not punish these people who committed crimes you were to take into consideration and that you would punish it yourselves. A. No, sir.

Q. You would not? A. Not that I know of.

Q. What did they mean by that? A. I don't know—I did not find out the meaning of it.

Q. But you were to take it up? A. If it was anything that we thought deserved to be punished for.

Q. Were you to punish? A. There was nothing said that we were to punish but to see that they were dealt with according to law. There was nothing said that we were to punish.

Q. What was to be done then? A. I don't know that there was anything to be done.

Q. Did you ever meet them at any other place? A. I met them once.

Q. Where was it? A. It was near Holt's factory, on the Big Alamance.

Q. What Holt's? A. Old Edwin Holt's.

Q. How many were there? A. I don't know.

Q. About how many? A. I think there was some four, five or six it may have been.

Q. Were there not a great many more than five or six? A. If there was I did not see them.

Q. Were they there disguised? A. No, sir, they were not there disguised.

Q. Who were they? A. George Anthony—I believe he

was along—Daniel Anthony, George Cheeks, Alvis Cheeks and John Gant.

Q. Anybody else? A. No, sir.

Q. Was Ellison Boon? A. Not that I know of.

Q. Jacob Boon? A. Not that I know of.

Q. Was Henry Boon there? A. I believe he was—and I believe Jake Boon was there too.

Q. Was Jacob May there? A. Not that I know of, he was not.

Q. Jerome May? A. Not that I know of.

Q. Jerry Coble? A. I don't know any such man.

Q. You say they were not disguised? A. No, sir.

Q. Who was in command of them? A. I don't know that there was any person in command.

Q. Who presided at the meeting? A. I don't know that there was any person. They all just met and talked together.

Q. Tell all that was said and done there? A. I cannot, because I don't recollect.

Q. Tell as much as you do recollect. A. I do not know that I recollect anything that passed between them to be positive about it.

Q. How came you to go that night? A. I was told to go.

Q. By whom? A. This Anthony.

Q. Which one? A. Daniel.

Q. Did he say who had called the meeting? A. No, sir.

Q. You say that you don't recollect anything that was said or done that night? A. No, sir, I do not.

Q. I want to ask you if, on the 8th day of August, in the year 1870, you were not in company with John Curtis in Robert L. Mebane's lane, and if the first thing said was not said by you to Curtis, "Are you one of Bob Mebane's Kukluxes;" and further, "This is not all the time we will have; we will "have better times after a while; we will make these men "do as that poor nigger did the night we put a rope around "his neck before we are done?" A. No, sir.

Q. Was not that said in the presence of Robert L. Mebane's two daughters, Mary A. and Mentona Mebane? A. No, sir.

Q. I ask you, if you did not at the same time and in the same presence, tell John Curtis that you would hang "a good many "niggers as you had hung Wyatt Outlaw?" A. No, sir.

Q. You did not? A. No, sir, I saw Curtis that day but I did not see him in Mebane's lane.

Q. Where did you meet him? A. I met him right between the end of Mebane's lane and New Church.

Q. What took place between you and him? A. I said "Good morning, Kuklux." He said "You are damnably mistaken," and he asked me why I called him that. I said Rob Mebane says you are just so.

Q. What else? A. I don't remember that there was anything else said about Kuklux or anything else.

Q. At the time and place described, did you not state to him that "this is not all the times we will have, we will make these "men do as that poor nigger did the night we put the rope around his neck?" A. No, sir.

Q. Or words to that effect? A. No, sir.

Q. Did not you say "we will hang a good many more "niggers as we hung Wyatt Outlaw?" A. No, sir.

Q. In the presence of Mary A. and Mentona Mebane? A. No, sir, there was no such words used as that about any niggers being hung.

Q. Where were you the night Outlaw was hung? A. I was at Peter Holt's.

Q. Who was there with you? A. No person there with me.

Q. Was not Peter Holt and his family there or were they away? A. Peter Holt and his wife and daughter and his boys.

Q. What time did you go there? A. I went there Saturday evening.

Q. What bour? A. It was about sun down.

Q. How long did you remain there? A. I remained there till Sunday evening.

Q. What time did you go to bed? A. I don't know exactly what time it was. We were all sitting in the house singing awhile after eating supper and before we went to bed.

Q. How far is that from Graham? A. Three miles or three and a half.

Q. How soon on Sunday did you hear about Outlaw's murder? A. I don't know what time of day it was on Sunday.

Q. About what time? A. It was sometime after the middle of the day.

Q. What did you do when you heard of it? A. I didn't do anything.

Q. Where did you go? A. I went home when I left there. I did not go away from there until I started for home.

Q. Did you go through Graham in going home? A. No, sir, I was on the other side of Graham.

Q. Who told you about the murder of Outlaw? A. Pete Holt himself I think.

Q. Had he been to town? A. No, sir, I think he said that Levin Woods had been over to town and he came home and told him.

Q. Did you not know that Wyatt Outlaw was to be hung? A. No, sir, I know nothing about the nigger. I never saw him in my life.

Q. Did you not know he was to be hung that night? A. No, sir, I never heard any body make any remark about him in any way.

Q. Do you know of Jerry Smith speaking of it? A. No, sir, I don't know of any Jerry Smith.

Q. Were you present when Jerry Smith, son, and a colored boy were whipped by Isaac Woodward, Rufus Nichols, Elison Boon, Jacob Boon, Henry Boon, Jacob May and Gerrold May? A. No, sir.

Mr. MERRIMON. I object to the question, there has been no proof that there was any such man. He takes it for granted that there was such a man, and that he was whipped. The question is calculated to produce an improper impression.

Mr. BADGER. He answers that he was not present.

Q. You say you were not present when any such persons were whipped? A. No, sir, nor when any one was whipped.

Q. How did you know that Robert Mebane was one of the Kukluxes? A. I did not know he was. I meant, when I told Curtis that, that I had heard Ruben Mebane say he was a Ku-klux. I said that I had heard he said he was one. That was all that was said about it.

Q. [By Mr. Merrimon.] When was that? A. It was the Monday when I started with the machine to thresh wheat—I was arrested that night.

Q. [The Chief Justice.] The day before you started with the machine? A. Yes, sir.

Q. What political party do you belong to or co-operate with? A. I claim to belong to the conservative party, if any. That is the party I vote with.

Q. Do you know of any person who has been whipped in Alamance or Caswell within two years past? A. No, sir, I don't know of any person at all that has ever been whipped, of my own knowledge.

Q. Have you never seen the back of one with scars on? A. No, sir. I have seen a man who was said to have been whipped, but I never saw any marks that I could say he had been.

Re-Direct Examination.

By Mr. Merrimon.

Q. When did you say you joined this organization? A. I cannot tell anything more than it was the latter part of the year 1868.

Q. How long did it last? A. Do you mean the order?

Q. Yes, sir? A. I cannot say; it did not last very long with me. I do not know how long it did last, but I never met them but twice.

Q. You spoke about the obligation. Was there any obligation to do any criminal act if you were commanded to? A. No, sir.

Q. Was any part of the obligation requiring you to resist the laws ofthe land?

The CHIEF JUSTICE. The question is not competent to be asked of your own witness. You may ask him what the obligation was. He is your own witness and you have no right to lead him.

Mr. MERRIMON. We did not go into this examination, Mr. Chief Justice. The witness has been asked the question as to whether he belonged to an organization called the White Brotherhood. He says he did. To that extent the respondent has made him their witness, and we have a right to ascertain about that organization upon re-examination, It is alleged on the other side that one of the objects of this organization was to perpetrate crime in pursuance of the order of its leaders and one particular means of securing immunity in doing it was securing the release of their owm members by false swearing and by having the juries made up ot the friends of the accused and acquitting them in that way. Since it has been shown that there was an obligation taken, I think testimony is competent to show whether there was any obligation to commit any such offence.

Mr. BOYDEN. The objection is that you cannot ask your own witness a leading question. It is our right to do so on cross-examination.

The CHIEF JUSTICE. The presiding officer is of the opinion that a leading question cannot be put to a witness by the counsel for the mangers and that the question he propounded is leading according to the definition laid down in the books.

Senator WARREN. I ask, Mr. Chief Justice, that the opinion of the court be taken on admitting the question.

The CHIEF JUSTICE put the question on the admitting the question proposed by Mr. Senator Warren and it was decided in the affirmative.

Q. The question is whether any portion of the obligation required you to resist the law or to swear to a lie to acquit a party charged with crime or if put upon a jury to find a false

verdict? A. No, sir, nothing of the sort. If there was anything of that sort I never heard of it.

Q. I understand you to say you were not in it a long time? A. No, sir.

Q. I put the question this way: If a party were indicted in a court for whipping a colored man or a white man, as one of that brotherhood, if you were called upon as a witness to testify against him—was there any obligation resting upon you as such member to testify in a particular way? A. No, sir.

Q. What would you be bound to testify in a case? A. Nothing binding to testify any way at all.

Q. [By the Chief Justice.] Mr. Merrimon desires to know whether you would regard your oath in court as binding on you to tell the whole truth without any reference to your being a member of that order? A. I would be bound to tell the truth. The oath I had taken did not bind me to swear to anything else. I would consider I was bound to tell the truth in what I swore to. I would not tell it in any other way.

Q. Who is John M. Curtis? A. He is a son of Sammy Curtis and the brother of Clem Curtis.

Q. A white man or a colored man? A. A white man.

Mr. MERRIMON. What were these girls' names you mentioned.

Mr. BADGER. Mary A. and Mentona Mebane.

Q. Did you see these girls the day mentioned? A. No, sir.

Q. Were they present when you were talking with Curtis? A. No, sir.

The hour of half past two having arrived, the court adjourned 'till to-morrow at eleven o'clock, A. M.

SIXTEENTH DAY.

SENATE CHAMBER, Feb. 14th, 1871.

The COURT met at eleven o'clock, pursuant to adjournment, Hon. R. M. Pearson, chief justice of the supreme court, in the chair.

The proceedings were opened by proclamation made in due form by the doorkeeper.

The CLERK proceeded to call the roll of senators, when the following gentlemen were found to be preseni.

Messrs. Albright, Allen, Barnett, Battle, Bellamy, Brogden, Brown, Cook, Council, Cowles, Crowell, Edwards, Eppes, Flemming, Gilmer, Graham, of Alamance, Graham, of Orange, Hawkins, Hyman, Jones, King, Latham, Ledbetter, Lehman, Linney, Love, Mauney, McClammy. McCotter, Merrimon, Morehead, Robbins, of Davidson, Robbins, of Rowan, Skinner, Troy, Waddell, Warren and Worth—38.

Senator TROY moved that reading of the journal of the proceedings of yesterday be dispensed with.

The CHIEF JUSSICE put the question on the motion of Senator Troy, and it was decided in the affirmative.

Senator GRAHAM, of Orange, moved to rescind the order adopted yesterday providing for two sessions of the court daily.

Senator MERRIMON called for the the yeas and nays.

Not a sufficient number seconding the call the yeas and nays were not ordered.

The CHIEF JUSTICE put the question on the motion of Senator Graham, of Orange, and it was decided in the negative.

Senator OLDS offered the following order:

Ordered, That the evidence and proceedings of the court of impeachment for each day shall be printed in preference to other

matters and laid on the desk of each member of the court by eleven o'clock the next day.

The CHIEF JUSTICE put the question on the adoption of the order of Senator Olds, and it was decided in the affirmative.

GEORGE N. WAITE, *a witness called on behalf of the Managers, being duly sworn, testified as follows:*

By Mr. MERRIMON.

Q. What is your age, name, place of residence, and business? A. George N. Waite. I am a conductor on the North Carelina railroad and reside in Charlotte.

Q. Your age? A. Twenty-seven.

Q. State to the court whether, at any time during the last year, you remember of any persons, armed men, black or white, rushing upon the train at Graham station, and if so, under what circumstances? A. A party of men came as I stopped at the station. I do not remember the time, or what month.

Q. Was it about August? A. I cannnot say what month it was, nor the number of men. They had about five men with them. There were two negroes and the rest white men—they were soldiers.

Q. What did they do? A. They jumped on the train and went to Company Shops.

Q. What time in the day or night was it? A. I think about three o'clock in the morning.

Q. Describe the manner in which they came on, and how they behaved themselves? A. I cannot tell you how they behaved; they didn't have far to go. They didn't do anything wrong as I know of.

Q. State whether they were armed? A. They were armed —they had pistols and guns.

Q. Was there cursing and swearing? A. Yes, they were cursing and swearing at each other and telling them not to let the prisoners get off.

Q. Did they curse the prisoners? A. No, not cursing the

prisoners, cursing and swearing not to let the prisoners get loose. When they got to the train, I heard them remark to hurry up and get on or the train would leave them.

Q. Did they force themselves on the train—did they go on without your consent? A. No, sir, they rushed right in as any one else would. Nobody asked my consent to go on the train.

Q. Did they continue to curse all along the road to the Shops? A. No, sir, they got quiet; they placed a guard at each door and allowed no man to go in and out but themselves.

Q. Were there passengers on the train? A. Yes, sir.

Q. When you got to Company Shops what did they do? A. They got off.

Q. Was there any cursing or swearing or threatening then? A. No threatening as I know of. They ordered them to get in ranks, and march off.

Q. Did they have any pistols drawn? A. Yes, they had their pistols cocked.

Q. Were they cocked while the train was going? A. Yes, sir, they had them ready for service if any thing happened.

Q. How were those prisoners dressed? A. Some were dressed in citizens clothes. I think the two negroes had on soldiers clothes—I cannot say for certain. The two negroes had on blue clothes, and the others had on common clothes.

Q. The men they had in their custody—how were they dressed? A. They were dressed in citizens clothes.

Q. Were they fully dressed? A. I cannot say for certain whether all of them was or not—some of them were.

Q. Do you recollect whether they had their coats or shirts on? A. Yes, sir, they had as far as I remember.

Cross-Examination waived.

AUSTIN WHITSETT, *a witness called on behalf of the Managers, being duly sworn, testified as follows:*

By Mr. Graham.

Q. State where you live, your name, place of residence and

business? A. I live in Alamance county, my name is Austin Whitsett and I carry on farming.

Q. What is your age? A. Sixty.

Q. State whether while the troops of Kirk were at Company Shops you had any intercourse with the officers, and how it began? A. The first I knew, I had heard about their arriving at the Shops. A gentleman rode to my house and called for me. I went to him and he told me they wanted me to take my wagon and team and haul baggage for Col. Kirk to Yanceyville.

Q. What reply did you make? A. I told him it was hardly possible for me to do it, situated as I was, and he told me it was no use to offer any excuse, that it was important business, that he was acting for Governor Holden and the president and I must do it.

Q. What president? A. The President of the United States, that is what he said—the president.

Q. He was acting under the authority of these officers, and you must do it? Yes, sir, and he told me he wanted me to be at the Shops in half an hour.

Q. How far was the Shops from your place? A. A mile and a half. I told him I could not do it—get ready so soon, that my team was out in the field loading oats. But he said I must come right along. He said if I refused to do it, he would send a detachment for me. I told him that there was no use of that, that I would unload and come there as quick as I could.

Q. When you came to the Shops what was done then at the camp? A. I drove up in the old field, and inquired of a sentinel near, where I could find Colonel Kirk, as a gentleman told me I must report to Colonel Kirk.

Q. Who was the gentleman at your house? A. Colonel Burgen. The sentinel pointed to a tent, and told me where he was, and I said would I be permitted to go to him, and would he say that I was there, he said he would walk with me; when we got opposite a tent he pointed to a gentleman, and said that

was him. He was sitting in the tent reading. Just as the sentinel spoke to him he rose and flung the paper down with some rough language, and said that he would kill some of them.

Q. What was the language? A. He said he would be d—d if he would not kill some of them.

Q. Some of whom? A. Some of the rebels, was what he said. The sentinel told him I wanted to see him, and he said he didn't want to see any d—d rebels. Burgen was just behind him and he said "you are too fast, this is the man who is to do the hauling for you." Kirk then said to excuse him, that he had been reading some lies that the rebels had been publishing on him, and he was mad.

Q. What did he order you to do? A. I told him what Colonel Burgen had told me, and I made the same excuse to him; he said he would hear of no excuse, and that I should be paid according to my own charges, and to make myself ready. I told him I was there with my wagon but said I hadn't brought any provender for my horses, as Burgen told me I need not do that—he said I would have to look out for myself. He ordered me to go and do so, and I did so, and went and got some feed for my horses.

Q. Did you go along with them? A. I loaded my wagon, and hauled a load from there to Yanceyville.

Q. Was there any other wagon along? A. Yes, sir, Squire Albright's two wagons and Hardin's.

Q. Were you present when Mr. McAllister came up with the writs on the way to Yanceyville? A. I was present. They came to a halt. It was very warm weather, and we travelled but a short distance when we stopped to refresh our teams and take some water and cool off, while we were resting, Colonel McAllister passed up the line, and went to the head of the battalion, and was there but a little while when he returned, guarded by Mr. Bergen and Mr. Yates, I think it was along. McAllister said to me as I passed by "I am not allowed to "talk to any one, do you want to send any word?" I told him

to tell my people that I would be home when I got there. I told him as he just passed along the line.

Q. Did you hear any conversation between the soldiers and officers on that occasion? A. The soldiers and officers around my wagon asked me if I knew that man. I told them that I knew him, and they said that they would bet anything that he had some kind of precept or writing for these men, pointing to the hack the prisoners were in. Directly after he passed down, we were put in a line of march again, and the next rest Kirk said nobody could get those men but the governor, that he was acting under the governor's orders and he would give them to nobody but the governor.

Q. Kirk made that observation? A. Yes.

Q. After McAllister had been up and had the interview with him? A. Yes, sir.

Q. Did you hear any observations from him or any person under his command at that time about shooting these men, or anything of that sort?

Mr. BOYDEN. That is a leading question.

A. The soldiers on guard asked me several times if I would not hate very much to see my friends shot. I told them I certainly would, and they said it was very likely they would be shot before they got to Yanceyville. That was talked frequently to me backwards and forwards by the officers and privates.

Q. Did they mention any of the particular ones that were going to be shot. A. Mr. Moore was one and Mr. Hunter was another.

Q. Mr. Adolphus Moore? A. Yes, sir.

Q. Which Hunter? A. James T. Hunter.

Q. The soldiers remarked that they would probably be shot before you got to Yanceyville? A. Yes, sir.

Q. Did you hear Kirk say anything about shooting the whole of them? A. Just before we got to Yanceyville for two or three miles there was a good many people coming in out of the road to see the battalion, and amongst them a good

many colored people, and they all seemed to have business with the Colonel, and it was reported at my wagon that the Colonel had received information ——

Q. State what occurred? A. He said that he had been informed that the Kuklux were going to fire on him before he got to town, and that he would kill every one of the prisoners if they fired on them, as fast as powder would burn.

Q. You went on and delivered your freight at Yanceyville? A. Yes, sir, I stayed there from 12 or 1 o'clock to a little after sundown when I was discharged.

Q. Did Kirk pay you for your service? A. They did not pay me. I have never been paid.

Q. What was the state of order or discipline among the troops? A. Among the soldiers?

Q. Their behavior? A. I don't know hardly how to describe it. I thought it was very bad all the time.

Q. In what respect? A. As to their manners, their behavior and their conversation.

Q. Disorder? A. Disorder, and they seemed not to care much about the orders from Colonel Kirk. There was a good deal of fruit along the line of the road and they were continually in the orchards pulling down the green apples. Kirk ordered the officers to keep them out, and when he stopped to rest he marched down the line, gave the order himself that if he saw any one in the orchards he would have them shot. After that nobody would go in the orchard until they wound around out of sight, then they would go in again.

Q. The subordinate officers did not keep them out of the orchards? A. They did not have any command over them. They would tell them that they would report them but they would go right along and get just as many apples as they wanted.

Q. Did they keep up talking all the way? A. Talking and hallooing all the time.

Q. What aged men did they appear to be? A. Boys of 15 years up to my age, some of them were.

Q. You say that their behavior was such as you have described—very little obedience to their officers? A. They had very little regard for them.

Q. Talking and cursing backwards and forwards to each other? A. Yes, sir, abusing the rebels and Kuklux all the time.

Cross-Examination.

By Mr. BOYDEN.

Q. To what political party do you belong? A. I am a democrat, sir, I have been ever since I was 21 years of age.

Q. How far do you live from Graham? A. Midway between Graham and Company Shops.

Q. Where were you on the night Outlaw was hung? A. I was at home.

Q. How soon did you hear that he was hung? A. I heard it Sunday as I went to church. I live about three quarters of a mile from the church, and I met a colored man who worked on the section.

Q. Did you go up to Graham that day? A. I did not.

Q. This colored man told you? A. Yes, sir.

Q. You didn't inquire into it? A. No, sir.

Q. Do you know of any other person being hung, or any person being whipped in the county of Alamance? A. No of my own knowledge I do not.

Q. Do you know of any secret political organization in the counties of Alamance or Caswell known as the Kuklux klan White Brotherhood, Constitutional Union Guard or the Invisible Empire? A. Not of my own knowledge.

Q. Have you ever seen any persons in disguise? A. I never did in my life.

Q. Have you seen any person that have been whipped with marks of being mutilated? A. I never have.

Q. You say you have no personal knowledge of any of these organizations? A. I have not.

Q. You say you are sixty years of age? A. I will be, if I live until next summer.

Q. You say you have not been paid, do you expect to be paid for the service? A. I do. I do not know whether I shall realize it or not.

Q. Do you know Daniel Whitsett? A. I do not. There is no Whitsett in Alamance county of that name. There is a man named Daniel Whitesell, I think he is the man you mean.

Q. Do you know him? A. I don't know as I do. There are a good many of them. I could not designate them.

Q. Does he live in your neighborhood? A. Whitesell lives above me some few miles.

Q. Do you know anything about the drowning of Puryear. Did you see his body? A. I didn't see his body. I heard of it.

Re-Direct Examination.

By Mr. GRAHAM.

Q. When was the time you hauled this freight? A. I hauled it about the 10th or 15th of July.

Q. What day of the month or week? A. The day of the week we started from Company Shops was on Saturday.

Q. That was the time? A. Yes, sir.

HENRY F. BRANDON, *a witness called on behalf of the Managers, being duly sworn, testified as follows:*

By Mr. GRAHAM.

Q. State your name, place of residence and employment? A. Henry F. Brandon. I reside at Yanceyville, Caswell county, and I am clerk of the Caswell county superior court.

Q. What is your age? A. I will be 41 years old the 16th of March.

Q. State whether the courts of justice in the county of Caswell have been interrupted at any time for the last two years, or whether they have been constantly in session at the proper time. A. They have not been interrupted since my connection with the business of clerk until they were stopped by the military occupation of the county by Colonel Kirk in July last.

Q. The court of probate and registration, and the superior courts, the courts of magistrates, and the registration of deeds,

and the sessions of the county commissioners, all had been in operation during this time? A. Until Kirk came.

Q. Was there any disturbance in the administration of justice in the county until he came? A. No.

Q. State whether there was any instance to your knowledge, of any person applying for process, which was not obtained if he made the proper affidavit, or complied with the conditions of the law entitling him to it? A. There was not.

Q. Was there a sheriff constantly in office during the time? A. Yes, sir.

Q. And constables in the several districts? A. In some of the districts there were no constables.

Q. How did that happen? A. They resigned, and they could not get any other person to fill their places.

Q. Were there magistrates in all the townships? A. Yes, sir.

Q. Was there any instance of any magistrate who would not grant process to anybody who made application in a lawful way to entitle himself to it? A. Not to my knowledge.

Q. When Colonel Kirk arrived describe the scene? A. Col. Kirk arrived there with a detachment of soldiers on the 18th July between the hours I suppose, of one and 2 o'clock in the day. There was public speaking that day by the candidates for congress. General Scott and General Leach were the persons who spoke. I was in my office at the time of the arrival of the troops, and there was a pretty large audience in the room. The troops arrived under the command of Colonel Kirk. They entered the inclosure of the court house through the gate. In entering they deployed around the court house encircling themselves in a double line, and placed sentinels at the gates to prevent the entrance either way of persons to and fro.

Q. There was an iron railing around the court house? A. Yes, sir, about four feet high.

Q. They formed inside of it? A. Right around the building. The lot is about three quarters of an acre. After de-

ploying the troops around the court house, I think in double line, they then came through the passage of the court, and placed a guard at the south door of the court house, which led outside of the enclosure. I then came out of my office and started into the court room, and asked the sentinel, who was standing in the passage, if I could go outside of the inclosure; he told me that I could not, that any one could come in it, but no one could go out. I then went into the court house building, General Scott opened a speech of an hour and a half, perhaps more, and at the conclusion, General Leach proceeded to reply, and he had got about half through the time General Scott had occupied when the meeting was interrupted and broken up. A squad of two or three soldiers came into the court room and commenced arresting persons. The first one that I saw arrested there was Dr. Roan, then I saw them arrest Dr. Yancey, and the next that followed was Mr. W. B. Bowe. I think it was Colonel Kirk who approached Dr. Roan and asked him if that was his name. He told him it was; he said he was his prisoner. Dr. Roan got up and followed him. It was the same with Dr. Yancey; he came next to Mr. Bowe, and asked if he was Mr. Bowe, and he said he was, then he said he was his prisoner. Mr. Bowe asked by what authority he arrested him. He said never mind by what authority but to get up and follow him. Bowe asked him a second time. He cursed him and cocked his pistol. That was Kirk. Right by him stood Yates, his major. They then seized hold of Mr. Bowe, and led him by force along—they didn't drag him. I suppose there were twenty-five soldiers in the court house at that time. They flocked in, and a most frightning scene was exhibited. There were the most fearful yells I ever heard. They were crying out at the top of their voices "Shoot the damned rebels, shoot the last one of them down." They had their guns cocked and they said "Shoot the d—d old rascal if he don't come." They carried him out. At length order was restored in a degree. There was three soldiers, one of them was Lieutenant Banner, and another was Lieutenant

Brown, the third one I don't know his name—and after order was restored, they came through the building with their muskets in hand, cocked, crying out at the top of their voices, "Now let any damned rascal open his mouth about anything we have done, and we will put him through." The third man I don't know who he was. But I am rather too fast. After deploying the men around the court house, they pointed their guns, cocked, up to the windows. While in the court house I reckon there was at least fifty, perhaps more, caps popped outside, I do not know by who.

Q. Were you there when these lines were formed? A. Yes, sir, we were all kept in the court house till 5 o'clock in the evening, when we were allowed to return home.

Q. These were all citizens who had assembled there to hear public affairs discussed, and they were kept there till 5 o'clock? A. Yes, sir.

Q. They were detained in the court house till 5 o'clock in the evening? A. Yes, sir.

Q. You were then told those who had not been arrested might go off? A. Yes, the line was opened and we went out. After going out I wanted to go into my office on some business. I obtained an introduction to Col. Kirk, who informed me that I could go in my office at my option, and instructed his guard to let me pass in in the day time, but not at night. I then asked the privilege of bringing out three books and a bundle of papers, that I might employ myself at home in the business of the office. He allowed me to do this. I had access to the office until Wednesday or Thursday night. I kept the key, and had access to the office until Thursday night; then a company of three men—a lieutenant—he had the badge of a lieutenant—two soldiers with muskets came to my house and demanded the key, saying that Colonel Kirk wanted the office and must have it. I surrendered the key to him. I went down to the office next morning and asked the Colonel to let me have it again. He replied that he could not. I found that

the door had been broken open before they had got the key there.

Q. And was not capable of being locked afterwards until it was repaired? A. No, sir. I had to have it repaired before it could be locked. I asked the occupant of the room, Captain McDowell, where the key was. He said he hadn't seen the key at all—that the door was entered without the key. They kept the key until the troops went away, when I got possession of it.

Q. When did they leave there? A. I am not certain as to the day or month. It was sometime between the first and middle of September, I think.

Q. When Kirk left there with his prisoners did he leave a force behind? A. He left a detachment behind under command of Major Yates.

Q. Were you restored to the possession of your office until after Kirk left? A. No, sir, I went and sought an interview with Major Yates. I stated that I was under a heavy bond for the safe-keeping of the records, and on account of my own pecuniary interest as well as the public, I desired to have the control of the key if I could not of the office. We replied that it was necessary to keep the key, I could not get it while he remained there.

Q. Did you get into the office occasionally, and see how matters stood there. A. I was allowed to go in under guard.

Q. What became of your papers? A. I found a great many of the papers when I went back scattered over the court house yard and in the rear of the building for about 50 or 60 yards in an old field or at least an unimproved and uncultivated lot.

Q. Some of them remained in the office, but quite a number of them you found scattered over the court house yard? A. As far as 50 yards from the building some of them had been trampled in the mud by the horses. I found some in the basement. I searched over the lot after they left in order to see if I could find any valuable papers that might be scattered about, and I got a little box full holding about a half bushel, and among

them I found one half of a decree in equity filed in 1835. It had been torn in too. I could not tell what the title of the cause was.

Q. What did the nature of it appear to be? A. It was a partition in equity to sell some slaves belonging to minor children.

Q. You found the papers scattered about in that way? A. Yes, sir, I found an order to the sheriff to lay off a dower for a widow, on the public square fronting the court house. That was done before they left. I didn't find it—a gentleman picked it up in my presence and handed it to me.

Q. So that the papers were thrown about in a wanton and mischievous way? A. I found about a flour barrel of them scattered about over the building when I took possession.

Q. Any of the records gone? A. Record N cannot be found since they left. It is a record of inventories and account of sales, &c.

Q. Belonging to the court of probate? A. Yes, sir.

Q. These were under the old system? A. Yes, sir. The book included the year 1835. I don't know when it commenced or ended. Have had occasion to search for it since that time to find the settlement of an estate, and I cannot find it.

Q. This was one of the books of record, and the others which you found were papers which had been filed in the office? A. Yes, sir, filed up in bundles and labelled, and belonging to the county, the superior courts and the courts of equity.

Q. State whether you had any correspondence with the governor of the state in regard to the condition of your office and the necessity on your part of getting it if possible? A. I did.

Q. (Handing letters to witness.) Look at these papers and say if they contain the correspondence? A. Yes, sir, that is the correspondence.

The witnesses here read the correspondence in the words following:

YANCEYVILLE, N. C., Aug. 24th, 1870.

Gov. W. W. Holden:

DEAR SIR.—I am clerk of the superiour court of this county,

and as such most respectfully ask to make a plain statement of facts to you. Soon after the arrival of Col. Kirk at this place the key of the clerk's office was demanded of me by Col. Kirk and of course I obeyed the demand and gave him the key, since which time I have not had possession of said office which contains all the records of the county, for the safe-keeping of which I am bound in a heavy bond with security. When Col. Kirk left here with the prisoners, thinking that he would not need the use of the office any further, I applied to Major Yates (left in command) requesting him to let me have the key; at the same time stated to him that I was under a heavy bond for the safe-keeping of the office, and that my own safety and that of the public required me to keep the key. He refused my request, saying he must have access to the office and must keep the key and, therefore, could not let me have it. During the whole of this time, I have been prevented from doing any public business except such as I could do outside of the office, as I was enabled and permitted to take out a few papers and books that I could work on at my home. I most respectfully submit the foregoing facts to you, hoping that you will require the office to be restored to me for my own protection as well as that of the public, as I have on several times found papers belonging to the office lying in the streets since I have been deprived of the use of it.

Your early attention to the above request will greatly relieve me. Very respectfully,

H. F. BRANDON, C. S. C.

EXECUTIVE DEPARTMENT,
STATE OF NORTH CAROLINA,
Raleigh, Aug. 29, 1870.

H. F. Brandon, Esq., Clerk Superior Court, Caswell Co.:

SIR.—Your letter of the 24th inst. has been received.

The county of Caswell being still under military authority, and the court house required for quartering the militia, the key of your office cannot be returned to you for the present.

I exhibited your letter to Col. Kirk and he assures me that

he gave strict orders for the preservation of the papers and records in the different offices.

Respectfully, W. W. HOLDEN, Gov.

Q. Did you make application to Kirk to restore you to possession of the office? A. Yes, sir, several times, and he made the same answer that Major Yates did, that it was necessary he should have the use of the office.

Q. How was it occupied? A. I heard it was occupied as a hospital. I heard this from the men when I visited the office. I do not know this of my own knowledge.

Q. State whether the building and enclosures received any injury while the troops were there? A. I think they did.

Q. In what respect? A. The building was very much defaced, the walls were very much scarred up, there were holes punched in the plastering, and the iron railing was broken in a dozen places—the uprights.

Q. Do you know any court house in the state, or any enclosure about public grounds in any county in any better condition than that was? A. I do not.

Q. Was there any court house in the country that was equal to it in elegance? A. I do not know but one court house that is equal to it.

Q. Was it a very elegant building? A. Yes, sir.

Q. You say that it was very considerably damaged? A. My opinion was that the building was damaged $1,000—the building and enclosure. I was sustained in that belief by the opinion of others.

Q. You state that they left there, you think, early in the month of September? A. Yes, sir. I cannot be positive as to the date. It was after the prisoners had all returned home from this place, and they had been discharged about the first or middle of September.

Q. Do you know of any instance of resistance to the law in the county of Caswell at all? A. I never heard any.

Q. Were the United States and state taxes collected regularly? A. Yes, sir.

Q. With regard to the prisoners, who were arrested, what is the age of Dr. Roan? A. I think he is about 64—from 64 to 70.

Q. What is his standing as a physician and a citizen? A. I don't know that you could find a man of better standing any where. He has high standing as a physician, and his character is above reproach as far as I have heard.

Q. What is his reputation as being a pious man? A. He has the reputation.

Mr. SMITH. Does the court think that is competent?

Mr. GRAHAM. We wish to let these gentlemen be seen as they are seen at home.

Q. What is the standing of Mr. Bowe? A. Mr. Bowe is a very exemplary gentleman, as much so as any man in the state of North Carolina.

Q. He is a gentleman of reputed piety connected with the church?

Mr. SMITH. I submit that proof of a gentleman's connection with the church is not proper.

The CHIEF JUSTICE. The presiding officer is of opinion that the proof is not admissible.

Q. What is Mr. Bowe's age? A. I suppose about 65 or 70 years.

Q. How long has he lived in the county of Caswell? A. I have known him 30 years. I do not know how much longer he has been living there.

Q. Has he been in public position in the county? A. Mr. Bowe was a magistrate when I first knew him. He was a member of the county court and one of the special court of the county, and a shireman a part of the time. Since the war he has been elected to the legislature from that county, and I think he was a magistrate at the time Kirk was there.

Q. At the time Kirk arrested him? A. Yes, sir.

Q. Did Kirk's interruption break up the meeting, or were

the candidates allowed to go on with their discussion? A. They broke it up, and perfect terror reigned.

Q. Kirk arrived before Mr. Scott began? A. Yes, sir.

Q. And surrounded the house? A. Yes, sir.

Q. He made a speech of an hour and a half in length? A. I suppose about that length.

Q. General Leach had proceeded about half his time when these men came into the house and began to arrest? A. Not more than that.

Q. After arresting some three or four this yell began? A. The meeting was not broken up until the arrest of Mr. Bowe. The arrest of Dr. Roan and Mr. Yancey didn't break up the meeting.

Q. Mr. Bowe was arrested, and this scene of confusion commenced, and there was no further speaking of the people? A. The people got away as fast as they could at that time. I believe everybody got away as fast as they could at that time.

Q. They had a guard at the door, and permitted nobody to go out? A. No one to go out but any body could come in.

Q. Until 5 o'clock in the evening? A. Yes, sir.

Q. Have you an extensive acquaintance with the people of the county? A. Yes, sir, I recken I know four fifths of the people of the county.

Q. Both complexions? A. Yes, sir, I think I do.

Q. State what as a general thing was the state of feeling existing between the blacks and whites? A. There was a good friendly relation between the two.

Q. Were the colored people in the employment of the whites, and renting land from them generally? A. Yes, sir, there were two or three kinds of employment. Some were laborers on a farm, some were tenants, some rented lands and gave a portion of the crops, and others rented houses and worked around where they pleased. I believe they all got employment. Some were house servants—cooks, and some attended to the gardens.

Q. That was the state of things when Kirk came to Yancey-

ville? A. In almost every way they were employed. All were employed that could be trusted with employment.

Q. How long had that been the case up to the time Kirk came with this expedition? A. Ever since the surrender.

Q. The two races you say were living harmoniously together? A. Yes, sir.

Q. Do you know of any instance to your knowledge of any colored man complaining of being injured to a magistrate or other authority, asking for redress and its being refused? A. I do not. There were magistrates there of both colors.

Q. You had a colored magistrate in the town? A. Yes, sir.

Q. Who was the other magistrate? A. Mr. J. W. Stevens was the magistrate at one time; Mr. Bowe was a magistrate after that.

Q. There was a magistrate of each complexion in the township where the court house was situated? A. Yes, sir.

Q. Did Mr. Bowe succeed Mr. Stevens as a magistrate? A. Yes, sir, he was appointed magistrate.

Q. State whether you heard any conversations between Kirk and his men with regard to the treatment of the citizens on certain occasions? A. I did on several occasions.

Q. State anything of the kind that you heard? A. Upon his arrival when Mr. Bowe was arrested, as I said just now, there was great confusion in the house, and threats were made in there by Kirk and this man Banner that if there was any resistance offered to their authority they would shoot the citizens, the last one of them, and burn the town.

Q. Who said that? A. I heard that spoken by Kirk when he arrested Bowe.

Q. He would shoot the prisoners and burn the town if there was any resistance? A. Shoot the prisoners and the other citizens too. I heard that spoken by Kirk when he arrested Mr. Bowe.

Q. Was anything said about burning? A. Yes, sir, he would burn up the town I heard that repeated several times by the men. I heard him make that threat in a public

speech on the square in the town on the Saturday before the election.

Q. What was the subject of his harangue? A. His subject was Kuklux and rebels. He said that he was not a speaking man, that he was a working man and he came there to put down the Kuklux and he intended to stay there until the last child was grey, but what he would do it. He remarked he had got a court constituted and he would try them, and if they were found guilty they would swing, and if there was any resistance offered to his authority that the last one in the town would go up, and the town would go up with them. I heard that in a public speech.

Q. In this oratory did you hear what he said he would do with the women and children? A. They were classed with the others, he would shoot them too. That was said by his men on repeated occasions.

Q. They would shoot the prisoners and the citizens, burn down the town and kill the women and children? A. That was the general remark. Part of it was uttered at the time he arrested Mr. Bowe. The next was more explicit when he made his speech. I heard it uttered by him almost any time. Whenever he became excited about anything he would make that remark, and not only myself but almost all the prisoners heard it.

Q. Did you have any United States troops there before Colonel Kirk came? A. We did. They came there about ten days before Colonel Kirk did.

Q. What was the character of those troops. A. They behaved themselves very well, as far as I know.

Q. How about the discipline and order prevailing among them? A. They stayed in their tents and didn't move without permission, and they behaved very respectfully.

Q. Respectfully to the citizens? A. You would not know except by their uniforms that they were not citizens.

Q. On good terms with them? A. Yes, sir.

Q. Did those United States troops commit any trespass or

pillage or plunder? A. I cannot, of my own knowledge, say that they did.

Mr. BOYDEN. State from your own knowledge. We don't want any guessing.

Q. How was it with Kirk's men? A. I think they did.

Q. I want to know whether they entered the gardens or orchards or otherwise and helped themselves to what they wanted? A. I speak of my own knowledge when I state that they entered my garden, and Mr. Yancey's garden, and stole the vegetables and fruit.

Q. What was the general behavior of these troops of Kirk's? A. Very bad.

Q. In what respect? A. In almost any respect you may call for.

Q. Specify some of them. A. They were very profane. I have never heard such swearing in my life before or since they arrived.

Q. State whether or not they kept it up. A. They kept it up all the time publicly wherever they went, and upon every and all occasions. They used the most indecent language and epithets, both in the sight of males and females, that I have ever heard.

Q. Profane and obscene? A. Yes, sir, in every conceivable way.

Q. State whether you saw them expose themselves in public places? A. I did.

Q. Where? A. At the public well on the public square in the town.

Q. A well at which there is a pump? A. Yes, sir.

Q. State what you saw? A. I saw one of them I know stripping himself and washing in the public square. He pulled off his pants and washed them—his drawers, and then he took his shirt off and washed that.

Q. In a prominent place where it could be seen by the families of the citizens around? A. Yes, sir, in the public square of the town. I suppose there was a half dozen families

or more whose doors are in plain view of the pump, and it was in a public business part of the town. The public square may have an acre and a half to two acres of ground or more.

Q. Did Kirk state or not when he made these terrible threats to the people whether he had any orders upon the subject, and if so, from whom? A. Yes, sir, I heard him applied to several times to parole men on bond, or to otherwise release them. He replied that he could not do so, that he had orders from Governor Holden to hold them all subject to his order. He told me myself that he had orders from Governor Holden to arrest every man he had arrested.

Q. Did he say he had orders to treat the citizens of the town in that way? A. He said that the Governor's orders were that if there was a hair of his mens' heads hurt, the prisoners and men were to be shot down—the women and children were to be butchered, and the town burnt. He was in an excited state when he spoke.

Q. [By the Chief Justice.] Had he been drinking when he said that? A. No, sir, I do not mean that. He was mad; he said it in a passion.

Q. These United States troops had been there ten or twelve days before Kirk came? A. One company had, and another company came about the night succeeding the time when the prisoners were taken away. I think they left there Saturday evening—and the next day another company came under command of Major Smith.

Q. Where were these troops on the day of the election? A. In their camp, so far as I know.

Q. Where were Kirk's men on the day of election? A. Parading the streets a portion of the time. Their tents were inside of the court house railing—it was full of tents and a portion ofthe soldiers were in there—but there was a guard or detachment that were parading the streets in squads of a half dozen at a time with their bayonets on their muskets, and they were going all through the crowd on the day of election.

Q. Were they organized in squads? A. They were in

squads under command of an officer—they seemed to be in command of a sergeant.

Q. The election was held at the court house? A. No, sir, it was held under the porch of Mr. Albert Mitchell who keeps a grocery store. The court house was occupied by the troops.

Q. These soldiers had their camp inside the court house inclosure, but the squads were parading about the public square and elsewhere, wherever they wanted to go. A. Yes, sir.

Q. Do you know whether detachments were sent off to superintend the polls at other places? A. I saw them coming in, and I was informed by their officers that——

Mr. SMITH. We object to that.

Mr. GRAHAM. We insist that it was a part of the outrage that the troops were sent to attend the election in the different precincts as well as having them about the place where the election was held at the court house.

Mr. SMITH. That is not our objection. It is attempting to prove the declaration of these men as to what transpired as a part of the *res gestæ :* it is only in that view that any proof has been admitted as to the conduct of the troops and their general behavior. When they undertake to state what took place narratively it is not competent to show that one of them said he had been off at a distance to accomplish some purpose.

Mr. GRAHAM. We think it is competent to show anything the men said while they were acting under military orders. They were detached and sent off and returned after the election. It is competent to show the object of their leaving.

The CHIEF JUSTICE. It is very clear you can ask him what was said or done.

By Mr. GRAHAM,

Q. State whether you heard anything said as to where they were going? A. I saw them start out the day before the election to various parts of the county, in various directions.

Q. Did some of the troops go towards Milton? A. They went in the direction of the different precincts in the county, but they had to take the same roads in leaving the town. They divided

when they got out of the village. I saw detachments going in each direction on that day and they returned the next day. There were eight detachments.

Q. That is the number of your townships? A. No sir, there are nine townships.

Q. Eight besides the one in which the court house stands? A. There are nine townships, and there was a detachment for every township as far as my recollection extends. Let me correct that statement; there was no detachment sent to one precinct, that was Pelham. I do not know that of my own knowledge.

Cross examination.

By Mr. BOYDEN,

Q. You were asked if you knew of any process being applied for by any person, and that process refused, and you said you did not? A. Yes sir, I said so.

Q. Do you know of any being applied for at all—have you any personal knowledge of one being applied for? A. Yes, sir.

Q. How many? A. I don't recollect how many.

Q. Mention one which you recollect? A. I do not know that I can give you the title of the case of any one.

Q. What sort of process do you mean was applied for—civil or criminal? A. Both.

Q. Mention one criminal application that was made at any time during that year? A. I recollect one. Mr. Griffith, the sheriff of the county, showed me a process—

Q. I am talking about the application to a magistrate or judge for a process. Do you know of any such application, yourself being present? A. I was not present when the application was made.

Q. You know of no application being made for any process—any criminal process? A. Have never been present when one was made.

Q. Where were you on the day Mr. Stevens was murdered? A. I was at home.

Mr. MERRIMON: I object to the question as it has not been proved that Stevens was murdered.

Mr. BOYDEN. We understand that we have a right to put the question in the form we have on the cross-examination.

Q. Did you see Mr. Stevens after he was murdered? A. I did not.

Q. Where were you on that day? A. I was in the town at home.

Q. You didn't see his body that day or the next day? A. I saw him alive that day.

Q. You didn't see him after he was dead? A. No, sir.

Q. Where were you the next day? A. Part of the day I was in town, at home.

Q. Were you in the court house at all the next day? A. I think not.

Q. How did it happen that you didn't go to the court house? A. I did go.

Q. Did you go inside? A. I was in the vestibule of the court house, but didn't go inside.

Q. Did you have any of the keys on that day? A. I only had my office key.

Q. You had your office key? A. It was at my house—it was in my possession, I did not have it at that time in my pocket.

Q. Where was the key the day he is said to have been murdered? A. I had it in my possession—in my pocket part of the time. I was at home part of the day, and at the clerk's office a part of the time.

Q. What portion of the time were you in the clerk's office? A. A short time in the evening.

Q. Were you in there when the speaking was going on? A. I was in there just before the speaking commenced. I remained during the time the meeting was being held until it broke up, and most of the people left.

Q. Were you in your office just before the speaking begun? A. Yes, sir.

Q. And you continued there in your office? A. Yes, sir, and then went in the court house.

Q. What time did you go up stairs? A. At the time the speaking commenced, between one and two o'clock.

Q. How long did you remain up stairs? A. During the whole of the meeting.

Q. When did you go into the office again? A. After the meeting was over. I stayed there until the whole crowd left. There was not more than five or six in the court building when I left.

Q. Did you see Mr. Stevens in the meeting? A. I did.

Q. How long did he continue in the meeting? A. About half the time.

Q. Did you see him leave? A. I did.

Q. Who left just before him, or just after him? A. I have no recollection who did, my attention was not directed to it.

Q. Don't you recollect that Mr. Wylie went out just before or just after him? A. I recollect that Mr. Wylie did go out, but whether just before or just after I do not recollect. Mr. Wylie and myself were sitting close together when he left to go out. I think it was sometime before Mr. Stevens left.

Q. You think it was before he left? A. Yes, sir.

Q. Define the length of time as near as you can? A. I cannot.

Q. Was it 5 minutes or an hour? A. 15 or 20 minutes I reckon. My attention was not directed to it and I did not look at the time.

Q. What time of the day do you think it was when Mr. Stevens left? A. I reckon it was somewhere about 4 o'clock, it may have been before or after but it was about that time.

Q. Did you hear any violent denunciation of Stephens at the meeting? A. No. sir.

Q. Didn't a man by the name of Hodnett? A. He denounced him.

Q. What did he say about him? A. He had an act of the legislature in his hands, which showed that he had received an

appropriation for payments of money made to him for a certain service called the spy service, and that is all he said.

Q. Did he not denounce him for engaging in that business? A. He called the attention of the people to it.

Q. Did he speak of it being proper or improper? A. He didn't say whether it was improper or not. He called upon the people, and remarked that "your representative has received so much for this spy service."

Q. Didn't that excite a good deal of indignation against him in the meeting? A. I cannot say that it did.

Q. Can you say that it didn't? A. That was generally known before Mr. Hodnett referred to it.

Q. Did it cause a good deal of unkind feeling against him? A. No, sir, I do not think it did, I had heard it spoken of by a number.

Q. You say it was generally known? A. It was contained in the auditor's report.

Q. You had seen it in the auditor's report? A. Yes, sir, and I had heard several others speak of it.

Q. After the meeting was over, you went into your office? A. Yes, sir, I remained there about twenty minutes, as far as I can recollect.

Q. Did you see Mr. Stevens after he left the court house? A. No, sir.

Q. You saw him leave the court room? A. Yes, sir, I saw him get up from his seat, walk to the head of the stairs, and I have not seen him since.

Q. You cannot tell who followed immediately after? A. I cannot, my attention was not called, I was listening to the speaking.

Q. Do you know the room his body was found in? A. Yes, sir.

Q. How near that room was your office? A. I suppose that it was about as far as from here to the door of the house of representatives.

Q. What was the next office to the place where the body

was found? A. That was the room known as the grand jury room.

Q. For what was it used generally at that time? A. It was not used for any purpose generally, but on that day it was used by the tax assessors.

Q. I understand you that the room adjoining the one in which Stevens' body was found was occupied on that day by the tax commissioners? A. Yes, and had been for two or three days previously.

Mr. GRAHAM. I beg leave to interrupt the examination at this point. I don't see any purpose in it. I have not objected to proof that Stevens was killed, but I do not suppose that this court is sitting for the purpose of ascertaining who killed him. That belongs to another tribunal; hence I conceive that all this proof in reference to the situation of the rooms about the building is irrelevant to any investigation that designed to show whether or not there was insurrection in the county of Caswell.

The CHIEF JUSTICE. The presiding officer is of the opinion that the proof is relevant if it is offered with the view of impeaching the witness.

Mr. BOYDEN. That is one of the objects. But sir, it is alleged on the part of the respondent that men were not punished in that county for violations of the law. It is alleged also, that this man Stevens was murdered in the court house in the day time when the building was filled with men and public speaking was going on, in a public office where business had been transacted, with only a thin partition between the apartment and the rooms adjoining, and we think there must have been numerous persons there who were well aware that this murder was committed while this meeting was being held. We allege also, that no indictment has been presented, and no punishment has been inflicted against the perpetrator and we insist that the fact that a man could be thus murdered under the circumstances which I have stated and has gone unpunished is a strong circumstance to establish the fact that

there was a determination on the part of these secret organizations existing to prevent any man from being punished who committed any of these crimes against persons who were in favor of carrying out the amendments to the constitution, and the laws passed thereunder. And certainly, the testimony is competent to impeach the witness.

Mr. GRAHAM. I do not see, Mr. Chief Justice, that it has any tendency in that direction. It is not proved that Stevens was killed that day and so far as I have heard it is not proved that he was killed that night. If I may be permitted to say what I understand will come out on cross examination, Stevens disappeared at four or five o'clock in the afternoon and that his body was found the next morning; and whether he was killed in this room or not does not appear. But if it did appear that he was killed there, I do not see what occupancy of the next room has to do with it. The question is whether there was an insurrection in the county of Caswell. To go into every breach of the law or into every act of violence is to protract this investigation to such an extent as to make it likely we shall never get through with it.

The CHIEF JUSTICE. The presiding officer is of the opinion that the evidence ought to be heard. It tends to support the allegation that there was this state of things in the county of Caswell, that the civil authority was unable to protect life and property. It can be offered to show the existence of that state of things.

Senator JONES. I dislike, Mr. Chief Justice, to take any part in regard to deciding upon the admissibility of the testimony, but it seems to me that if this species of proof is admitted it will extend the investigation to an interminable length. And, sir, being responsible in part for the consumption of the public time I ask that the question of other admissibility of the proof be put to the Senate.

Senator EDWARDS. I second the motion. The inquiry here is whether or not the respondent is guilty of the charges preferred against him in the articles of impeachment. How

this inquiry tends to shed any light upon that subject I do not perceive.

The CHIEF JUSTICE. The Senator has no right to discuss the question unless by permission of the Senate.

Mr. BRAGG. And there is this further consideration, Mr. Chief Justice: Questions have been asked, which we forbore to object to, hoping they would take some direction which would make the examination relevant. But if the time of this body is to be devoted to an inquiry as to whether Frank Wylie killed Stevens, where is this thing to end? I cannot see the propriety of trying that case in this proceeding unless it is to have some effect before this body. That crime has been heretofore fully investigated, and the evidence laid before the public authorities in Caswell, and it is not a matter to be investigated here as to who was the perpetrator of that murder. This court is not setting as an examining court to determine who are guilty of individual crimes. This is a court for the trial of officers on articles of impeachment.

A sufficient number seconding the call for a decision by the senate,

The CHIEF JUSTICE put the question on admitting the question propounded by the counsel for the respondent, and it was decided in the negative by the following vote:

Those who voted in the affirmative are:

Messrs. Barnett, Bellamy, Eppes, Hawkins, Hyman, King, Lehman, McCotterand Olds—9.

Those who voted in the negative are:

Messrs. Albright, Allen, Battle, Brown, Cook, Council, Cowles, Crowell, Edwards, Flemming, Gilmer, Graham, of Alamance, Graham, of Orange, Jones, Latham, Ledbetter, Linney, Love, Mauney, McClammy, Merrimon, Morehead, Robbins, of Davidson, Robbins, of Rowan, Skinner, Speed, Troy, Waddell, Warren and Worth—30.

Q. I ask you Mr. Brandon, if you have any knowledge of any secret political organization in the county of Caswell no matter by what name they are called? A. Yes, sir.

Q. Tell us what you know about it? A. A society callen the Loyal League, that is all I know.

Q. Is that a secret society? A. They called it a secret society.

Q. What do you know about it? A. I know nothing about it.

Q. Answer the other question—do you know of any secret political organization known by the name of the Kuklux Klan, the White Brotherhood, Constitutional Union Guard, the Invis ible Empire, or any other secret political organization? A. No, sir, none except the one I referred to just now.

Q. You say you do not know that? A. No, I have not seen that in operation.

Q. Are their meetings secret? A. I understand they are.

Q. I ask your knowledge? A. I have no knowledge of it at all. I have seen them on their parades and I have seen them in their processions with their regalia on and drum and fife.

Q. They were not concealing the fact that they belonged to it? A. I have talked with them about it, and they have given me to understand that while these displays in the streets were public no one knew anything about the business transacted in their meetings except themselves.

Q. There was no attempt so far as you knew to conceal the fact that they belonged to these organizations? A. None that I know of.

Q. You say that you know of none of these others? A. No, sir.

Q. I think I understand you to say you didn't see Stephens' body? A. I didn't see his body.

Q. Have you seen any persons in disguise? A. I never have, sir.

Q. Do you know of your own knowledge of any colored man being killed in the county? A. No, sir.

Q. Do you know of any colored or white man in the county

being whipped? A. No, sir, not to my knowledge. I can only speak from hearsay.

Q. Have you seen the body of any persons that had been whipped shortly after he had been whipped? A. I don't know that I could answer that in that way—not to my knowledge I have not. I have seen men who said they were whipped.

Q. Did you see any marks? A. I never saw any marks.

Q. Do you know Robin Jacob? A. I never knew him.

Q. You don't know how far he lived from Yanceyville? A. No, sir.

Q. You say you are clerk of the court? A. Yes, sir.

Q. Has there been any prosecution instituted in your court for the murder of Stevens against anybody? A. There is no bill of indictment found.

Q. Has there been any bill of indictment sent? A. Not to my knowledge.

Q. Has there been any bill of indictment sent for the murder of a man of the name of Robin Jacobs? A. Not to my knowledge.

Q. Has there been any bill sent for whippings in the county of Caswell? A. I think there was a bill for the whipping of three colored persons.

Q. Was it found? A. No, sir. The witnesses were called but didn't answer. The case is now continued.

Q. No witnesses were sent before the grand jury for any of these offences that you know of? A. Not to my knowledge.

Q. Were there a number of persons bound over at the last superior court by the judges of the supreme court to appear at your court? A. Yes, sir, three.

Q. Were there any bills sent against them? A. Not to my knowledge.

Q. No bills sent or found to your knowledge? A. No, sir.

Q. You attended to the business of the court as clerk. A. Yes, sir.

Q. If any such bills had been sent you would have known of it. A. I suppose so.

Q. Did I understand you to say that Kirk said Governor Holden ordered him if there was any resistance, or attempt to rescue the prisoners which he took that he should shoot men, women and children? A. I said that Kirk said if a hair of his mens' heads was hurt, or if there was any resistance to their authority, he had orders to shoot the prisoners, murder the women and children and burn the town.

Q. And to murder the women and children—was that his language? A. That was what he said—or kill them.

Q. I ask you for the exact language according to the best of your recollection. A. That was it.

Q. He was to murder the women and children? A. Shoot the prisoners, kill the men, murder the women and children and burn the town, that is as near his identical language as I can express it.

Q. Who heard that besides you? A. I don't know any particular person. It was a general remark by him.

Q. Was it made in a public speech? A. Yes, sir.

Q. There was a good many that heard it? A. I should think there was.

Q. Tell any one of them—I would like you to name them?

A. I cannot refer to any particular individual.

Q. Tell us how it happened that you didn't go and see the body of Stevens? A. Two reasons. I went down town after I got my breakfast and went in the vestibule of the court house. When I got there I found the passage crowded and no chance to get in unless I jammed through and I didn't care about going in particularly, and have to rush through the crowd.

Q. Did the crowd continue there all day? A. Until the body was removed. I didn't remain there all day.

Q. You only made that one attempt? A. Yes, sir.

Q. That was your reason? A. Yes, sir.

Q. No other reason? A. None in the world. I started in there but the crowd was so thick that I turned back, and didn't have anxiety enough to push my way through it.

Q. During that night after the meeting where were you? A. I was at home.

Q. Do you know of any persons riding about on horseback during the night? A. It was a remarkably quiet night as far as I know.

Q. You were not out? A. No, sir.

Q. How far do you live from the court house? A. About 200 or 300 yards.

Q. Do you know anything about a guard being placed around the court house that night? A. Not to my knowledge.

Q. When did you first hear he was missing? A. I heard it in the morning.

Q. You did not hear about it that night? A. No, sir, I heard it in the morning, I reckon about sun up.

Re-direct examination.

By Mr. Graham,

Q. How long had Stevens been dead before Kirk came? A. He was said to have been murdered on the 21st May. Kirk arrived there on the 18th July.

Q. Nearly two months? A. Yes, sir.

Q. Were there any bills of indictment sent against any body for the murder of Stevens—state anything that took place at the last term of the court on that subject. A. There were three men bound over by the chief justice—Mr. F. A. Wylie, Mr. James Mitchell and Mr. Felix Roan. The papers were handed to me by Mr. Bulla sometime during the week.

Q. Who was Mr. Bulla? A. The solicitor of the circuit. During that time Messrs. Watt and Withers, who were the attorneys for the persons bound over, moved the judge to discharge the prisoners, as there was no bill against them. The judge called upon Mr. Bulla to know whether there was any bill or not. Mr. Bulla arose and stated that he had not been furnished with the names of any witnesses, and he knew of no one to summon as witnesses, and that he had been informed that the material witnesses for the state could not be found. They had been called in another case and failed, and judg-

ment *nisi* had been entered against them. Further, he said that he had examined into the evidence, and he had not drawn a bill for the reason that he did not think the grand jury would find a bill on that evidence, and consequently he would not draw one unless he was ordered to do so by the judge, and that he had no further use for their being bound over any further. The judge then inquired if he asked to have them further bound, and he said he did not. He said that he had examined the testimony and even if he could find the witnesses he didn't think there was sufficient testimony to find a true bill on, and they were consequently discharged by the judge.

Q. This was a court held by Judge Tourgee? A. That was the language as near as I can remember.

Q. Both the judge and the solicitor, what was their politics understood to be? A. They were understood to be Republicans.

By Mr. SMITH.

Q. Do you know anything about Judge Tourgee's politics? A. I have heard him make a Republican speech.

Q. How do you know about Mr. Bullas? A. I have heard him announce himself a republican.

By Mr GRAHAM [resuming].

Q. The solicitor said he had no evidence upon which he could ask the grand jury to find a bill? A. Yes, sir.

Q. He was asked by the judge if he wished to bind these men for their further appearance? A. Yes, sir.

Q. In what sum had they given bail? A. I cannot be positive, but I think $5,000.

Q. They were bound to appear, and they did appear, and the solicitor was asked whether he wished them to be further bound, and he said he didn't, and they were discharged. A. Yes, sir.

Q. Have you seen a public procession of the Loyal League? A. Yes, sir.

Q. They had secret meetings? A. That is what they told me.

Q. Were they composed of white or colored people or both? A. I never saw any one in them but colored people.

Q. Colored people constitute the league? A. Yes, so far as my knowledge goes. I know nothing of any except the one in the place.

Q. Is it a political society? A. That is what they say.

Q. Do you know whether they as a mass voted the same ticket from your observation? A. Yes, I think they did.

Q. As to the issuing of processes from the superior court, are all the civil processes of the court issued from your office as clerk? A. Yes, sir.

Q. Did any colored man ever apply for process who was entitled to it and have it refused? A. No, sir.

Q. You know of no instance of refusal by any officer of the county? A. I know of no refusal by any one whose duty it was to issue a process or execute it.

JESSE C. GRIFFITH, *a witness called on behalf of the Managers being duly sworn, testified as follows:*

By Mr. GRAHAM.

Q. State where you reside, what office you hold, if any, and what is your age? A. I reside in Caswell county, two miles from Yanceyville. I am sheriff of the county and am fifty years of age.

Q. How long have you been sheriff? A. I have been sheriff ten years or more, and deputy sheriff ten years or more. I have been altogether twenty years, nearly twenty-one.

Q. Are you acquainted with the people of the county, of both complexions? A. I am.

Q. What have been the general relations between the white and the black people of that county the last two years? A. I think it has been a friendly relation as a general thing.

Q. State whether or not they have had contracts together, and business relations all the time? A. Yes, sir.

Q. Were the colored people generally engaged in agriculture? A. Yes, sir.

Q. They had contracts for labor and service in various ways with the whites? A. Yes, sir, some worked for wages, some gave part of the crops, some were renters and some worked about by the day. There is a great many of that class about the village of Yanceyville.

Q. Do you know of any of them being proscribed, or refused employment, or acts of good neighborhood by reason of their political sentiments? A. Nary one.

Q. Do you know of any instance in which there has been an attempt by force to control their votes? A. None whatever.

Q. Or to frighten them? A. No, sir.

Mr. SMITH. I do not desire to be captious, but it does seem to me that every question that has been asked by the counsel so far of the witness, will admit of an answer yes or no.

Mr. GRAHAM. I think that when a question is put in the alternative form it cannot be regarded as a leading question.

The CHIEF JUSTICE. The true way of asking a witness on his direct examination is in reference to the condition of things.

Mr. GRAHAM. I submit we can ask the further question whether or not he knows of any instance in which a colored man has been refused employment by reason of his political sentiments.

Mr. SMITH. That I contend is a leading question. The test of whether a question is leading or not is whether it suggests to the witness the reply that is wanted, whether the question is put in the alternative form or not. I do not desire to charge my friend with any desire to violate the rule, but I think that the true question to ask the witness on his direct examination is what took place, what was said and done, and then occasionally it is proper to suggest some particular topic to which his attention may be called.

Q. You said you were sheriff, I ask you whether you have had a general acquaintance with the people of the county or not? A. I have had a general acquaintance with them.

Q. I have asked you also whether or not you had known any instance of a colored man being denied employment or otherwise mistreated by reason of his political sentiments? A. I know of no instance of that sort.

Q. I ask you whether or not these colored people were usually engaged in agriculture? A. Yes.

Q. And whether or not contracts between them and the whites as to business? A. There were contracts between them of various sorts. Some worked for wages, some gave half of the crop, some rented houses and worked about by the day.

Q. State whether or not there has been any instance of resistance to the law for a long period. A. Not at all, none whatever.

Q. As sheriff have you or not found it necessary to take assistance with you to make arrests? A. Not at all.

Q. Are you a collector of the taxes? A. Yes, sir.

Q. Has there or not been any resistance to the collection of the state tax or United States tax? A. No resistance to the collection of the state and county revenues or the United States tax. I have had the funds placed in my hands frequently to pay the taxes of persons who lived in places remote from the court house.

Q. This killing of Stevens, when did it occur? A. The 21st May, it was said to be.

Q. Did any United States troops come to the county afterwards? A. Yes, sir.

Q. What time? A. They came there, I think, about the 9th or 10th July.

Q. Who was their commander? A. Major Rodney, and Captain Field.

Q. State whether anything passed between you and these commanding officers upon their arrival shortly afterwards, and what it was? A. They arrived at Yanceyville on Saturday

evening. Major Rodney was in a buggy with a gentleman from Danville, Mr. Chambers. I was acquainted with Mr. Chambers. I was sitting in a crowd and Mr. Chambers called me out of the crowd and introduced me to Major Rodney.

Mr. SMITH: I do not understand what this has to do with the matter on trial.

Mr. GRAHAM. We desire to show what this military officer's view of his duty was, and to prove that when he arrived he went to the sheriff and told him that he had come to aid him in the discharge of his duties if he should need a military force.

The CHIEF JUSTICE. The presiding officer is of the opinion that the testimony is competent.

The WITNESS. After the usual salutations, Major Rodney remarked to me that he had come with some troops, and was ordered to report to me to assist me in the execution of the law. I politely replied that I didn't think that I would have any need of his services, that I could execute any precept in my hands without any assistance. I found Major Rodney to be very much of a gentleman.

Q. Were you at Yanceyville on the day of the arrival of Kirk? A. I was.

Q. The United States military arrived on the 9th? A. The United States troops came on Saturday, and the next Monday week Kirk came there, the 18th July. Major Rodney came there the Saturday week before.

Q. Will you state to the court what took place upon Kirk's arrival? A. There was a public meeting called for that day. General Leach and General Scott were to make speeches that day. They were the candidates for congress. We were expecting Kirk on that day. The speaking was fixed for one o'clock. I went down with General Leach and General Scott from the hotel, and he asked me to make a proclamation for the audience to assemble. I made the proclamation, and very soon after the court house was surrounded by armed men. It was said that nobody was allowed to go out. I went down below, the cour-

room was up stairs. When I got down I found the coutr house all surrounded by armed men. I saw a negro point me out to Kirk. I didn't know who Kirk was at that time but I afterwards ascertained who he was, and he walked up to me with his pistol cocked, and with three or four men, and told me I was their prisoner. I asked him by what authority, he says, "D—n you, come on here, you are my prisoner." I remarked to him that better men than I had been taken prisoners. Then he carried me into the room with Alamance prisoners. There were six or seven men in the room which was the one in which Steven's was murdered or his body was found in. I was in there a short time when he carried me into another room by myself. Some one of Kirk's men, I don't know which, told them to search me and take my arms. I told him I had none but what God Almighty gave me Some one of them then said, "Take him out of here." There were three or four of his men—and they carried me then into this other room and sat me down.

Q. Sat you down there? A. In a chair. I asked Kirk who he was and what his name was, and he said his name was Colonel Kirk.

Q. He carried you into this room? A. Yes, sir, I sat there sometime. Presently they commenced bringing in prisoners, Judge Kerr, Dr. Roan, Mr. Hill, Thomas J. Wommack and Bazilla Graves.

Q. They brought in these gentlemen one after another as they arrested them in the room in which you were? A. Yes, sir. After staying there sometime and while in there they brought in Mr. Bowe. Before they brought him in there seemed to be a considerable disturbance at the court house, and after a while they came in with Mr. Bowe, making a fuss. Some four or five of Kirk's men commenced cursing and abusing him. They were around the windows on the outside, and they called him a d—d old Kuklux son of a b—h. One of them said he had torn his coat and called out to shoot the d—d old Kuklux son of a b—h. After a

while quiet was restored and then Mr. Jones proposed to Kirk to carry us up into the court house. The day was very warm and the room we were in was small. He assented and took us up stairs. After a while they brought in Mr. Wylie and put him in a room with us.

Q. They brought him in from the country? A. Yes, sir.

Q. You were detained a prisoner how long? A. Nearly five weeks. I was arrested the 18th of July and was released here the 20th of August. I stayed at Yanceyville nearly four weeks. On a Saturday they carried me from Yanceyville to Company Shops, and I remained there until Monday. Then they carried us down to Graham, and we stayed in Graham court house until Thursday, I suppose between 11 and 12 o'clock when we left and got here at 3 o'clock. We were then turned over to Colonel Clarke, and we remained in his charge from Thursday until Saturday about 10 o'clock.

Q. Was any evidence brought against you? A. None sir.

Q. How many prisoners were there then? A. There was Mr. Bowe, Judge Kerr, Mr. Hill, Dr. Yancey, Bazilla Graves, Thomas J. Wommack, Yancey Jones, Adolphus G. Moore, James T. Mitchell, Joseph R. Fowler and myself. No, there was Dr. Roan and Robert Roane.

Q. What became of you when you were brought before Judge Brooks, or the chief justice? A. We were brought before the chief justice. I have got the discharge here.

Q. State whether or not your petitions were withdrawn? A. I understood our petitions for a *habeas corpus* were withdrawn.

Q. Did any one take out a state's warrant against any body and if so, who made the affidavit? A. I didn't see an affidavit.

Q. Who were the warrants against? A. I think the warrants were against—

Q. By Mr. Boyden, Did you see them? A. No, sir.

Q. Was Mr. Wylie in that company? A. Yes, sir.

Q. Was he bound over for any treason or insurrection against the government? A. He was bound to appear at the fall term of the superior court of Caswell.

Q. What for? A. For the alleged murder of Stevens as I understood him.

Q. Was there any proceeding or charge against him as an insurgent or traitor to the government? A. I don't know about the charges against him. I saw no charge against him.

Q. Did you hear anything said at Caswell at the time he was discharged about any such suggestion? A. Not a word, I was present when Mr. Wylie, Mr. Roan and Mr. Mitchell were discharged.

Q. Is all that Mr. Brandon described in reference to that correct? A. I think so.

Q. Do you know of Kirk making a speech? A. I could not hear what he said to the crowd assembled around him. I was in prison, and he was outside of the enclosure of the court house. I saw him and Yates both, but I could not hear what they said.

Q. Did you hear anything he said to the prisoners inside of the house at any time? A. I did. He came up there, and said that he was threatened with an attack outside by the d—d Kuklux, and that if he was attacked he would kill the prisoners, destroy the women and children, and burn up the d—d town. He made those declarations.

Q. Did he not use any violent language towards the prisoners? A. Yes, sir.

Mr. Boyden. That is certainly leading.

Q. State whether you heard any violent language, or saw any violent conduct on the part of Kirk towards these prisoners at any time, if so, describe the scene? A. On more occasions than one he would come up and curse them for being Kuklux and so on—for being d—d Kuklux. On one occasion he cursed a man of the name of Weedon, who was a prisoner from Alamance, terribly, and told him he was the d—dest scoundrel in there. Weedon had said nothing that I could see. Weedon was walking across the court house for exercise, with his hands that way, [indicating] when Kirk commenced cursing him and

saying that he was the d—dest scoundrel in there, and that he was making Kuklux signs.

Q. Kirk understood them? A. I suppose so.

Q. State whether or not on any other occasion there was any violent language used to any particular prisoner or to the whole of them, and if so, what it was? A. He would frequently curse the prisoners. When he seemed to be in a pet he would come up there and take his cursing out on the prisoners.

Q. Do you remember any particular occasion when he apprehended an attack? A. That is what I stated when he came up, and said he would kill the prisoners, destroy the women and children, and burn up the damned town in the event of the attack taking place.

Q. Did he or not state that he was going to do this of himself, or that he had orders? A. That he had orders to do it.

Q. Who from? A. I don't know, I don't recollect that he said from whom the orders issued.

Q. Did you see these troops from your window? A. I did.

Q. State what their behavior was, whether it was orderly or disorderly? A. Very disorderly I should say.

Q. In what particular? A. Their language was very profane and obscene.

Q. Was their language in such a tone that it would reach the peoples houses or not? A. Yes, sir, they were all over the village. We could see around at a considerable distance, see them frequently in peoples gardens. I was up there one day when Kirk's attention was called to the fact that they were in Dr. Roan's orchard. He called them back and sent a guard after them. They came back and they emptied something like half a bushel of apples, and you could see them come in most any time with fruit and vegetables. He didn't seem to have any restraint upon them at all.

Q. How was it with respect to the United States troops? A. They behaved themselves very respectfully.

Q. These men of Kirk's pillaged in gardens. A. I have no

charge against the United States men, they were very orderly and well behaved.

Q. State whether or not there was any indecency or exposure of their persons about the court house. A. They were indecent.

Q. In what respect? A. In exposing their persons.

Q. In public places? A. Yes sir, in public view near the pump, and in view of Mr. Johnson's and Mrs. Neill's dwellings.

Q. These gentlemen had females in their families there? A. Yes, sir.

Q. How many magistrates had you in the township including Yanceyville? A. Mr. Stevens' was a magistrate and Mr. John E. Cook was a magistrate, and Mr. Bowe was a magistrate after Mr. Steven's death. He was appointed his successor.

Q. What was the complexion of the magistrate Cook? A. Black.

Q. State whether or not he did a good deal of the business? A. Yes, a great portion of the business.

Q. Do you know of any application being made to him or to Mr. Bowe, or to any other justice of the peace for any process against persons for the murder of Stevens? A. No application that I know of.

Q. After the finding of the body of Stevens were you there? A. I was.

Q. State whether or not there was any inquest? A. The morning after Stevens was said to be found Dr. Yancey, the coroner, sent for me. A message came to my house an hour by the sun I suppose, and stated that the doctor had sent for me, that Stevens was found dead in the court house that morning. I got out my horse and went to Yanceyville, and found Dr. Yancey there. He was summoning a jury, and he then proceeded to the inquest as soon as the jury was organized.

Q. How long did it continue in session? A. Until about 12 o'clock that Sunday, then they adjourned to meet at 3 o'clock to give time to send for some witnesses. These witnesses came and they met again and remained in session until

near night, and they then adjourned to meet on Monday. They did meet on Monday, and had other witnesses sent for and we were in session pretty much all day on Monday. We then adjourned to meet on Thursday. We met again on Thursday, and held a session a good part of the day.

Q. The jury returned a verdict? A. On Thursday.

Q. Did any one to your knowledge make an accusation against any other person of being the murderer of Stevens? A. No, sir, none whatever.

Q. Do you know of your own knowledge of any charge being preferred against anybody? A. No, sir.

Q. Did you hear the proceedings described by Mr. Brandon, at the last term when a warrant of commitment, which had sent Wylie and others was before the court was passed upon? A. Yes, sir, I was in court then.

Q. Do you or not concur with Mr. Brandon in that statement ——

Mr. BOYDEN. We object to that.

Mr. GRAHAM. Do you want me to go through the entire statement again with this witness?

Q. [By the Chief Justice.] Was Mr. Brandon's statement correct? A. Yes, sir, I think his statement was correct.

Q. Do you know whether or not Kirk had anything to do with the election on the 4th or 5th August? A. He seemed to have a good deal to do with it, his men marching all through the crowd, and he appointed the commissioners to receive the returns of the election.

Q. Did these commissioners superintend the voting—or was it to make the returns? A. To make the returns.

Q. What commissioners did he appoint? A. He appointed Mr. Bowe, Dr. Roan and Mr. Jones. I saw them when they were counting the votes, he seemed to be engaged about that, taking an interest in it.

Q. Kirk seemed to be overlooking it? A. Yes, sir.

Q. Were there any other persons attending the election except these military men—these persons appointed by him—

I mean any civil officers such as could lawfully hold an election? A. No, sir, those men that held the polls had been appointed by the county commissioners. He just seemed to be superintending the counting of the votes after the polls closed.

Q. And he appointed commissioners to make the return? A. To receive the returns from the poll-holders. Dr. Roan, Mr. Bowe and Mr. Jones are the county commissioners. They were in prison at the time of the election. While the voting was going on, Kirk's men were around the polls pretty much all the time.

Q. How many prisoners were there in confinement who were Caswell voters? A. I think about 20.

Q. State whether or not you voted, or were allowed to vote? A. Yes, sir, we went out between a file of soldiers and voted.

Q. You have stated that these magistrates in the township of Yanceyville were in the habit of issuing warrants and doing business—state whether any persons had been arrested for injuries to colored people? A. Yes, there was a warrant issued by Judge Tourgee against a couple of young men, and a warrant issued against three others, by Mr. Stevens.

Q. State whether or not they were arrested? A. They were.

Q. What disposition was made of their cases? A. The warrant from Judge Tourgee directed me to have them before him at Greensboro' at chambers. I arrested the young men and carried them there.

Q. Any resistance? A. None whatever.

Q. Did you take any guard along? A. None at all. He bound them over to the fall term of the superior court, and sent them back in my charge, and authorized me to take justified bail for them. I did so, and returned the papers to the clerk. That was the 13th May.

Q. Before Stevens disappeared? A. Yes, sir, that was on Friday. The warrant was placed in my hands on Saturday before the 13th, and at the same time Mr. Stevens issued a warrant and placed it in the hands of my deputy, Mr. Jordan,

a one armed man, for the arrest of these three young men. He arrested them, and carried them before Mr. Stevens, and the state's witnesses didn't appear, and counsel moved to discharge the prisoners. Mr. Stevens bound them over to appear before him on the Monday following, the 13th May. I believe Mr. Stevens was at Greensboro' on the 13th May, when Tourgee bound them over. On Monday they were bound over by Mr. Stevens.

Q. There were two cases? A. Yes, sir.

Q. One before Judge Tourgee, where you arrested three men and carried them without a guard to Greensboro'? A. Yes, sir.

Q. And there Judge Tourgee dealt with them by requiring them to enter into recognizances? A. Yes, sir, $500 justified security.

Q. And authorized you to take the bail? A. Yes, sir.

Q. There were three others brought before Stevens and he bound them over? A. They were arrested by my deputy, a one armed soldier.

Q. Did he have any trouble in arresting them? A. None whatever.

Q. State whether or not any process was placed in your hands, or in your deputy's hands that was not executed? A. No, sir.

Q. I mean by resistance? A. That is what I mean by resistance. There was none.

Q. If the man was in the county he was arrested? A. Yes, sir.

Q. And without force? A. Yes, sir.

Q. State whether you heard Kirk say that he would have a military court? A. On two occasions he sent an omnibus to get the court. At one time it was to assemble the 8th of August, and then it was to assemble a short time afterwards. He seemed to be in a fret about it because he had been promised a court and it had not come.

Q. Who promised it? A. The governor I suppose.

Q. Did he say he had been promised a court? A. Yes, sir.

Q. Did he say by whom the promise had been made? A. I think he did. I think that the governor had promised him a court, and that he was acting under that promise.

Q. He seemed to be a little fretted that the Court had not come? A. Yes, sir.

Q. And did he actually send twice for the court? A. Yes, sir, that was his declaration.

Q. But the court did not come up to the time when you were taken away? A. No, sir, after this, after the court was to assemble Colonel Williamson came up to see the prisoners and Colonel Kirk with him. Colonel Williamson assured us in the presence of Kirk that there would be no military court, and Kirk said there would be.

Q. Colonel George Williamson? A. Yes, sir, he assured us emphatically, that there would be no military court.

Q. Had Colonel Williamson been to Raleigh? A. I don't know. We learned that he had been on the road travelling for some time.

Q. When Williamson was permitted to come in he informed the prisoners that there would be no military court? A. Colonel Williamson assured us that there would be no military court.

(By Mr. Smith.) What else? A. Kirk said there would be a military court. Colonel Williamson said, "I tell you there will be no court."

Q. Is that all he said? A. That is all he said that I recollect.

Q. State while you were in prison whether you saw a scene between Kirk and Weedon. A. Yes, sir. I have just described that.

Q. State whether or not you saw any occasion when Weedon was shot at or otherwise maltreated? A. I didn't see the man when he shot. I heard the report and saw Weedon get off.

Q. Did he get off slowly or abrubtly? A. He got off pretty quick—what the soldiers call double-quick time.

Q. Was that the occasion on which Kirk cursed him? A. No, before that, I think Kirk cursed him.

Q. State whether or not you saw where any ball had taken effect on the house? A. I did. There is a projection of stone around the court house, just under the vestibule. I saw where the ball struck that, just where Weedon was sitting.

Q. You have said that Mr. Wylie was brought into this prison after you were there? A. Yes, sir.

Q. State whether or not you saw any violence used upon him by any of Kirk's men? A. I cannot say that I did.

Senator EDWARDS moved that when this session is concluded the court adjourn for the day.

The CHIEF JUSTICE put the question on the motion of Senator Edwards, and it was decided in the affirmative.

Cross examination.

By Mr. BOYDEN.

Q. How long have you been sheriff and deputy? A. Altogether about twenty-one years.

Q. Continually one or the other? Yes, sir.

Q. You say you are well acquainted in Caswell county? A. Yes, sir.

Q. Have a great many colored people left Caswell county within the last two or three years? A. Yes, sir, a good many left in the last two or three years.

Q. State if you don't know that a paper was got up and signed by the land holders and others not to employ certain colored people? A. No, sir, I know nothing of it.

Q. You have no knowledge of any such paper being circulated in the county of Caswell and signed by anybody? A. No, sir.

Q. Did you not sign such a paper? A. No, sir, I did not.

Q. You did not sign anything resembling that? No, sir.

Q. You neither saw nor signed such a paper? A. No, sir.

Q. I ask you if there was not a pretty general understand-

ing at one time since the war, among landholders and other men of property, that they would not employ any colored people who were republicans? A. No, sir.

Mr. GRAHAM. I think that the examination is going beyond the limit.

The CHIEF JUSTICE. The presiding officer is of the opinion that the question comes within the rule admitting testimony as to the relations between the whites and the blacks.

Q. I understand you to answer the question that you knew of no colored man being refused employment on account of his politics? A. Of a man of that sort being refused on that ground?

Q. Do you know of a refusal on any ground? A. There are some who on account of their bad character, find it a hard matter to get homes.

Q. The refusal was put on that ground? A. There were some negroes of notoriously bad character who found it a great task to get homes.

Q. A good many of that description? A. Several of them.

Q. I ask if there were not a good many? A. I suppose a half dozen or a dozen.

Q. That is not very many? A. That is all I know of.

Q. You knew Mr. Stevens? A. Yes, sir.

Q. I ask if you and Mr. Stevens did not have a serious difficulty about his ordering you to arrest some one for swearing and abusing him while he was trying a case?

Mr. GRAHAM. I object to the question. I do not know what this has to do with this matter.

Q. There was no difficulty between you and him? A. We had a chunk of a fight once.

Q. I mean since the war? A. That was since the war.

Q. Did he not call upon you while he was in the exercise of his authority trying a case to arrest somebody? A. Yes, sir, and I did so and committed the party to jall.

Q. For what offence was that? A. Stealing.

Q. You spoke of certain men who were taken before Judge Tourgee? A. Yes, sir.

Q. He bound them over? A. Yes, sir.

Q. Were there ever any bills found against them? A. I don't think there were.

Q. He just bound them over and that was the end of it? A. They were rebound for appearance at the next spring term.

Q. The states' witnesses were not there? A. They were called and failed.

Q. There were no witnesses? A. No, sir.

Q. They left the country? A. I understood one went off with Kirk's men.

Q. Do you know whether he was hired? A. Joe Wommack was one of the witnesses, and the last I saw of him he was with Kirk, the evening that they left Yanceyville. I have learned since that he went with them. The other went—I don't know where he is—but he was at Danville the last I heard of him.

Q. Do you know whether any of them were hired to leave the country to prevent them from being witnesses? A. I do not know anything about it.

Q. But they have gone off? A. They were not there when they were called at court.

Q. It is understood they have left the country? A. One I understood was with Kirk's men, and the last I heard of the other he was at Danville, Virginia.

Q. There were some other men bound over for the murder of Stevens? A. There were.

Q. But there were no witnesses in the case? A. None.

Q. Nothing has been done in the case? A. These men were bound over.

Q. But there are no witnesses? A. No, sir.

Q. [By Mr. Graham.] The accused parties were re-bound at the last term? A. Yes, sir, for appearance at the next term.

Q. How soon after they were first taked up? A. Do you mean after the warrant was issued?

Q. When did that issue? A. The warrant was issued on Friday before the 13th of May, and they were arrested immediately.

Q. What time does the superior court meet in Caswell? A. About the 1st of April and October.

Q. There has been but one court since? A. But one court since.

Q. You say you saw the body of Mr. Stevens? A. I did.

Q. What time in the morning did you see him? A. I suppose it was about an hour by the sun, a messenger came and I rode two miles.

Q. One hour by the sun in the morning. A. Yes, sir, I rode two miles to the court house and I saw him very soon after I got there.

Q. Was his body in the court house? A. Yes, sir.

Q. Were you there the day before? A. I was.

Q. Was there a public meeting there? A. There was.

Q. Did you see Mr. Stevens? A. I did.

Q. Where did you see him? A. I saw him in the court house.

Q. In what part of it? A. He was sitting in the aisle leading up to where the judges sit.

Q. Do you mean in the court room? A. Yes, sir.

Q. Did you see anybody talking with him? A. I don't know as I did.

Q. Did you see him when he left the court room? A. I saw him just as he was leaving the court down the steps.

Q. Did you see him afterwards until you saw him dead the next morning? A. I never did.

Q. What was the condition of the body when you saw him? A. He was sitting or rather inclining with a rope around his neck—a stab in each side and a wound in the breast.

Q. Any appearance of blood having spirted out there? A. Yes sir.

Q. How large was the knot around his neck? A. It was just like a loop—the rope was doubled.

Q. Drawn behind or before? A. It seemed to be over the shoulder. One end of the rope was not farther by his neck than this [indicating ten inches in length], the other was longer.

Q. Was it made fast? A. Yes, sir, the rope was nearly buried.

Q. In the flesh? A. Yes, sir.

Q. What sort of a man was Stevens for strength? A. He was rather a weakly man.

Q. You were in the court room when speeches were going on? A. Yes, sir. All the time.

Q. Was there a good deal of clapping and shouting during the speeches? A. I don't know that there was.

Mr. GRAHAM. We do not think this is competent evidence. There is no proof that there was any mob organized against the government.

Mr. BOYDEN. The Managers have gone into the question of the soldiers going in to break up the meeting.

Mr. GRAHAM. The gentleman is mistaken, that meeting was two months after.

Mr. BOYDEN. So it was. I had confounded them for the moment.

Q. In this meeting of which you have spoken, I ask if there was not a violent denunciation made against Mr. Stevens by Mr. Hodnett? A. Which meeting do you allude to?

Q. I mean the meeting at the time he was murdered? A. There was a meeting on the 21st of May, and Mr. Hodnett made a speech on that day.

Q. Was it not very bitter and denunciatory against Stevens? A. I did not consider it so.

Q. Tell us some of it? A. He called attention to the acts of Mr. Stevens and said that he was the representative of the county and that he had received so many dollars as a spy upon the people and he had the report before him.

Q. I ask you if he did not denounce Stevens in very strong language. A. I don't know as he did.

Q. What did he say besides the fact? A. I don't know as he said anything besides the fact. He called attention to the course he had taken.

Q. Did he say that to approve or disapprove of him in very strong language? A. He disapproved of it as every other man did; but I don't know as there was any bitter denunciation.

Q. Don't you know that there was a very excited bitter feeling against Mr. Stevens? A. No, sir, I don't know any such thing.

Q. Was there any manifestations of it at the time? A. I saw none.

Q. I ask you if you don't know that before dark that evening Stevens was missing and they were hunting for him? A. No, sir, I don't.

Q. I ask you if you don't know that the colored people stood guard about the house that night? A. Not of my own knowledge.

Q. Where were you after the meeting? A. I was at home.

Q. What time did you leave? A. About sundown, and I went home, two miles.

Q. Do you say you heard no enquiry about him before sundown? A. No, sir, I don't think I heard anything until next morning about one hour by the sun, when the coroner sent for me. It was the first I heard of it.

Q. I ask you if his brother was not there, and you did not know that he was searching and inquiring for him? A. I have no knowledge. I have heard he was.

Q. You left about sunset? A. A little after sunset.

Q. I will ask you the question—what political party do you co-operate with? A. The democratic party.

Q. I ask you if you knew of any secret political organization in the counties of Alamance or Caswell, known under the general name of "Kuklux Klan," or the "White Brotherhood," "Constitutional Union Guard," or the "Invisible Empire?" A. I know nothing of them. I have heard of the

Kuklux, but I never heard of the others until Kirk come there to Yanceyville. There is a league there, and that may be the Constitutional Union Guard.

Q. You are inclined to think that they are? A. I would not be surprised if they were, but I don't know the fact.

Q. Is that a secret organization, or do they parade publicly? A. They parade in public and meet in secret—that is, they tell me so. I was never in their meetings.

Q. But they do not deny they belong to it? A. No, sir.

Q. But we are enquiring about organizations to which men do not admit they belong? A. I don't know anything about them.

Q. Do you know of any whipping of colored men in the county of Caswell? A. Not of my own knowledge. I saw marks on these men at Greensboro'.

Q. Who were they? A. Joe Wommack, Sam Patton and Smith Pinnix.

Q. Did they look as if they had been pretty severely whipped? A. They were pretty smartly marked.

Q. Do you know of any others? A. Not of my own knowledge.

Q. Have you seen marks upon any of them? A. No, sir.

Q. Did you know of Robbin Jacobs? A. No, sir.

Q. You did not see his dead body? A. No, sir.

Q. Do you know whether there was an inquest in that county over a man by the name of Robbin Jacobs? A. None that I know of. It was several days after that occurred that I heard of it. It was near the Person line.

Q. You have spoken of the room in which the body of Stevens was found, were you in that room on the day of the meeting? A. I was not.

Q. At no time of the day? A. No, sir.

Q. Were you in there between four and five o'clock—in that room? A. No, sir.

Q. You did not go out of that room where the meeting was until four or five o'clock? A. I did not.

Q. Did you see a man by the name of Hemphill there? A. Yes, sir.

Q. Did you have a talk with him? A. I did.

Q. What was it? A. In regard to a horse that he had.

Q. Is that all? A. Yes, sir, he had a writ of replevin.

Mr. GRAHAM. This examination is all very interesting, but it strikes me that the court might be more profitably employed than listening to it.

Q. Did you have any conversation with Hemphill about Stevens? A. Not at all.

Q. Did you see Hemphill come out of that room? A. I did not.

Q. Did you see any one come out? A. I did not.

Q. Were you down in the passage there at any time when speaking was going on? A. No, sir, I was not. I was in the meeting all the time.

Q. You did not leave until the meeting broke up? A. No, sir. I made the proclamation of the meeting and took a seat behind the clerk's desk and remained there from that time until it was closed.

Q. Was there any clapping or cheering in the meeting? A. I just told you there was not.

Q. There was not any? A. I don't think there was.

Q. You say you had one difficulty with Stevens, when was that?

Mr. GRAHAM. We object to that.

A. I have no objection to telling the time.

Mr. GRAHAM. We object to it as irrelevant.

The WITNESS. It was in the fall of 1868 we had a chunk of a fight. We were both indicted and it was settled in court.

Re-Direct Examination.

By Mr. GRAHAM.

Q. Danville is how many miles from Yanceyville? A. It is called fifteen miles—it is fifteen and a fraction, by the survey.

Q. It is a pretty active trading town? A. Yes, sir.

Q. Colored men resort there to get employment? A. Yes, sir.

Q. You say one of these men who complained of being injured was in Danville when you last heard of him, and the other went off with Kirk's men? A. That is what I understood. The last I saw of him he was with Kirk's men.

Q. This league that you speak of is it composed of colored or were there white men with it? A. I never saw a white man with them, but it was understood that Stevens belonged to it.

Q. It was generally composed of colored men? A. Yes.

On motion of Senator Robbins, of Rowan, the court adjourned till to-morrow at eleven o'clock, A. M.

SEVENTEENTH DAY.

SENATE CHAMBER, February 15th, 1871.

The COURT met at eleven o'clock, A. M., pursuant to adjournment, Hon. R. M. Pearson, Chief Justice of the Supreme Court in the chair.

The proceedings were opened by a proclamation made in due form by the doorkeeper.

The CLERK proceeded to call the roll of senators, when the following gentlemen were found to be present:

Messrs. Albright, Allen, Barnett, Battle, Brogden, Brown, Cook, Council, Cowles, Crowell, Currie, Edwards, Eppes, Flemming, Gilmer, Graham, of Alamance, Graham, of Orange, Hawkins, Hyman, Jones, King, Latham, Ledbetter, Lehman, Linney, Love, Mauney, McClammy, McCotter, Merrimon, Morehead, Murphy, Olds, Price, Robbins, of Davidson, Robbins, of Rowan, Skinner, Speed, Troy, Waddell, Warren, Worth—42.

Senator EDWARDS offered the following order:

Ordered, That whenever a witness is undergoing examination and the hour of adjournment shall arrive, there shall be an extension of the session until such examination upon both sides is concluded.

The CHIEF JUSTICE put the question on the adoption of the order offered ot senator Edwards, and it was decided in the affirmative.

SAMUEL P. HILL, *a witness called on behalf of the Managers, being duly sworn, testified as follows:*

By Mr. GRAHAM.

Q. You are a lawyer by profession and reside at Yanceyville? A. Yes, sir.

Q. State whether you were the counsel employed by the friends of Mr. Stevens who was assassinated in the town of

Yanceyville? A. Yes, sir, I was his counsel during his life time and at the time of his death. I have since been counsel for the family and was during the investigation before the coroner.

Q. He had suits in courts in which you were his counsel prior to his death? A. Yes, sir.

Q. When his body was found state whether or not you were retained as counsel by his friends to inquire into and ascertain if possible who had killed him? A. His wife sent to my room the evening before, about an hour after dark, to inquire if I had seen him or if he was at my office. I had understood that he was at the court house that day and I suggested to the servant that they had better——

Q. They came to your office? A. Yes, sir, the next morning about sunrise or a little before, Mr. Stevens' brother came to my office and said his body had been found, and he retained me to carry on the investigation before the coroner. I appeared. I instructed the coroner to summons colored men as well as white men for the jury and he did so, taking the most intelligent colored people he could. He selected five colored men and seven white men, and when the door was opened I went into the room with the jury.

Q. Was that on Sunday? A. Yes, sir.

Q. How soon after the jury assembled? A. According to my best recollection—I cannot tell exactly—I should think they were impanneled, or summoned at least, by nine or ten o'clock, and they went forthwith to make an investigation.

Q. Did the examination go on that day? A. Yes, sir, the examination went on that day. We examined some witnesses. We got through with all the witnesses we could get hold and summoned at the time. There was a large number of colored people present and I stated that if any of them knew anything in reference to Mr. Stevens' movements no matter how unimportant it might seem to them, I would have the parties brought there. I stated that they might not possibly understand what would be important. The coroner adjourned the

inquest until three o'clock Sunday; then, in the meantime, I had such witnesses summoned as were suggested by the friends of the family and others. I must say that I received assistance of the citizens all about there, for they were eager to find out who were the authors of the crime. At three o'clock the jury again assembled and I had witnesses examined until perhaps very near dark. I then suggested to the coroner, or perhaps it was suggested by some member of the jury, that the inquest be adjourned and that the jury meet again the next morning. The suggestion was acceded to and the next morning they again renewed the investigation and continued it during the better part of that day.

Q. Did you have any assistance in the way of counsel? A. I did—the last day—Mr. Ball of Greensborough. The friends of the family told me they were going to send him and I told them I would be pleased to have him, and on Thursday he came down. I had the testimony read to him that had been taken. He remarked that he was very eager to get back to Greensborough and he went to see Mrs. Stevens, the widow lady, and he told me when he came back that they were satisfied he should leave.

Q. What were Mr. Ball's political connections? A. I have understood him to be a republican, but I have never heard him say so.

Q. You prosecuted that investigation how long? A. Sunday, Monday and Thursday. The jury expressed themselves willing to hold on longer if I thought I could get any further testimony, but in view of the course Mr. Ball and I had determined to pursue, I came to the conclusion that there were no other witnesses we could bring to prove any material facts. We had examined some thirty or forty witnesses—I do not remember the exact number.

Q. State whether or not the names of any witnesses were suggested to be sent for? A. Every witness was sent for who was suggested, and they were all examined except one. I declined to examine a man named Humphrey—I think

about a conversation. He came to my office. A gentleman had had a conversation with him, it was a white gentleman, Mr. Graves—and I had him summoned. The boy was very anxious to leave and go back. He was stripping tobacco. I saw his testimony was not important, and I could get along without it as I had other witnesses who could prove the same facts. He was the only one suggested whom I did not examine.

Q. State whether the witnesses that were not examined by you were subsequently brought to Raleigh and examined before the chief justice and judges of the superior court? A. I do not remember but one. I should think every one I examined were here. There was a man also by the name of Wommack, whom I never heard until I saw him here as a witness. I never heard his name even after the inquest.

Q. State whether or not that evidence was published after the inquest was given to the public? A. Yes, sir, shortly after the inquest was dissolved a gentleman by the name of Steadman, from Stokes county, came to me for the purpose of getting the testimony. I had it all taken in writing by two young gentlemen of the profession, and he obtained that and also the paper from the superior court clerk's office, and he published it in pamphlet history of the case, the names of the witnesses and what they were reputed to have sworn to.

Q. How soon did that go out to the public? A. I do not remember the exact time, though it was a very short time before we were brought down here.

Q. It was before Kirk's coming to Yanceyville? A. Yes, sir, it was.

Q. State whether you were at home on the day of the arrival of Kirk at Yanceyville, and if so, describe what took place. A. My office is some forty or fifty yards from the court house. There is a building or two and a lot between the court house square and my office. My office is between thirty and forty yards off the main street. I was engaged with a client that morning. There were to be some addresses delivered between Gen. Scott and Gen. Leach that day.

Q. They were candidates for congress? A. Yes, sir. I had not been on the streets at all, and I was engaged at the time with a client of mine from Georgia. I saw these troops filing up. I knew they were to be there, and did not go out, but looked at them go by from my door. A very short time thereafter, Major Yates came and asked if Mr. Hill was there. I told him that he was. He asked me if I was the gentleman. I told him I was. He said he would like to see me and I stepped out. It was very warm, I had no coat or vest on, and my coat and vest with my pocket book and watch were lying on the table. I stepped out, I threw on a summer coat that I had lying on the bed, put on my hat and he remarked, "You are my prisoner." I told him "very well." I left my client sitting in the office. About that time I saw a negro servant of mine and told him to go and take charge of my watch and papers and things and lock up the office, which he did. Maj. Yates asked me if I was unwell, and I told him that I was, and if he would allow me to return to my office I would report to him wherever he said. He said he would see. He met Col. Kirk and told him that I was unwell and desired to return to my office and remain.

Q. Did anything occur on the way? A. He asked me if I was armed. I told him I was not. There were three men with pistols in their hands, and one of them walked very close to me, and Yates was very rude. Yates said I am in command here and he took his position beside me. Another one walked on the other side. We went to the court house and when we got to the court house we found that Col. Kirk was standing at the gate. Yates told him that I was sick and that I would like to go to my office and be allowed to report.

Q. That was said to Kirk? A. Yes, sir, Kirk hesitated for a time and I thought he was going to assent, but he told me to go in the court house and I went in the south room where I found brother Kerr, Doctor Roan, Doctor Yancey and I think Sheriff Griffith and James M. Neill. I do not remember any others in the room at the time. I stayed in there a little while,

(it turned out that these gentlemen were all prisoners,) when we heard a great noise and confusion, both around the court house and up stairs, and in a very few moments Mr. Bowe was brought in.

Q. What sort of a noise was this? A. There was stamping and hallooing. I could merely hear the noise. It was a noise of great confusion. He was brought in the room and he was resisting. They had hold of him and Yates, who I understood, was a baptist preacher, was in very violent expressions.

Q. Cursing Mr. Bowe? A. Yes, sir.

Q. Give a speciman or too? A. He said, he was a G—d d—d rascal—I don't know every thing—you could well imagine. There were some others in the room with me. I was afraid that Mr. Bowe would make some resistance and that we would be fired on; and I supposed that if they did, they would fire without much regard to whom they struck. Mr. Kerr went to Mr. Bowe and requested him to be still and quiet and make no resistance. Mr. Bowe did so and sat down leaning against the fireplace—I do not know that he did it designedly—but it was where he could not be seen from the window or door of the room. In the meantime, the door was crowded with soldiers with bayonets fixed and guns ready, and the windows were crowded with men d—ning and cursing and crying out to shoot the grey-headed scoundrel—and I expected every moment he would be fired upon. But I don't think they saw him. They had their pistols—Yates did—and then Kirk came in and shook his pistol over Mr. Bowe. I can not tell all he said, but he finally, in a passion, shoved Yates and all the rest out of the room.

Q. Kirk did that? A. Yes, sir. He shoved them from the room and told them to keep out.

Q. What was done with you next? A. The day being very warm, after a little while we were sent up stairs in the principal room of the court house—the court room. I found that I had to stay there all night and sent word to my servant to bring me a blanket or two and he brought them and I stayed

with the gentlemen who were under arrest in the jury room that night, on the floor, and the next day I had my mattrass and bed clothing brought over to me.

Q. State to the court whether Kirk had any conversation with you about his feats in war? A. He did not to me individually. I will say that Kirk's conduct towards me I have no complaint to make of—I mean to me personally—aside from holding me in prison. He came up there one day very much excited and remarked that he had been on the federal side during the war and told us of some incidents in his career, some fighting he had done, and that if any resistance was made or any attempt to rescue us his orders were to fire upon the prisoners, and that the town would be burned up and the women and children would be put to death. He said those were his orders.

Q. That if there was any resistance the prisoners would be shot, the town burned and the women and children put to death? A. Yes, sir. I made some reply to him at that time.

Q. First state what feats he had accomplished in the war according to his statement?

Mr. BOYDEN. I don't understand how that has anything to do with this case.

Mr. GRAHAM. We have a right to the declarations of this man Kirk. If it is desired I will state what we expect to prove, though it would hardly perhaps be strictly proper. We desire to show that he magnified himself into a tremendous man of war, with a view of terrifying these people whom he was threatening.

The CHIEF JUSTICE. It is competent to state what took place.

A. I only remember one thing and I do not remember it sufficiently even to give the details, but he said that with ten men he had whipped so many confederate troops—quite a number.

Q. He said that his orders were such as you have stated here? A. Yes, sir.

Q. Will you state whether at any time he cursed the prisoners, and if so, on what occasion? A. He came in there again and said that he understoood there were two companies that had been raised in Danville and who were within two or three miles of the village with the purpose of rescuing the prisoners. I made the remark that if he was the soldier he had told us he was the other day, it was a little remarkable he had not sent out scouts to see whether the fact were true, that I did not believe it, he made a reply and then repeated this expression. I then replied if he attempted that we would give him a lively time before he finished him.

Q. He repeated that he would shoot the prisoners and burn down the village? A. Yes, sir, and I said if he attempted that, we would give him a lively time before he had finished it.

Q. State whether or not on any other occasion he cursed the prisoners, and if so, state the circumstances? A. I cannot state except his cursing Mr. Weeden.

Q. What was that scene? A. I was walking behind Mr. Weeden—we were promenading the court room for exercise. Weeden was walking in front of me. I do not recollect particularly what it was about, but Colonel Kirk made his appearance, and cursed him for all the d—d rascals and mean men and everything he could think of, as violent as he could. Weeden made no reply nor did any one else.

Q. State whether or not Mr. Weeden was fired upon by anybody, and if so, for what? A. There is a vestibule out of the court room and three or four of us, Mr. Weeden among others, were sitting on the railing. There was a drunken lieutenant belonging to Kirk's command, flourishing a pistol about. I was not paying much attention, but my recollection is that Weeden remarked to him "You had better take care or you will shoot somebody." I was not looking at the time, as there was conversation going on, but as near as I recollect, he replied that he would shoot him. I did not see him. I was looking another way, but I heard a pistol fire and the ball struck the projection of stone on the window sill.

Q. Was that anywhere near Weeden was standing? A. It was in range with him. The window goes down to the floor, and this projection goes right out from the floor. Weeden was standing right over it.

Q. Weeden was in the upper story of the court house and this man was standing on the ground? A. On the ground, some fifteen feet below.

Q. He fired in the range of Weeden and the ball struck this projection? A. The projection intervened between Weeden and the officer.

Q. Was the officer there in command at the time? A. I do not know. I did not see much command in any of them.

Q. What was the general conduct as for discipline and order among the troops—you have been in the service yourself? A. They had no discipline whatever. For instance, when we retired from the court room for any purpose we generally went out under guard. When we would go down and call the corporal of the guard, it maybe we would find him there or maybe not. It was a mere accident whether we would find him or an officer of the guard.

Q. State whether there were any instances of disorder? A. They were cursing and abusing one another and every body else, and seemed to do just as they pleased. There were a great many of them who went out with me under guard, whom I supposed to be over fourteen years old, and some were bare headed and bare footed. I saw an officer drilling his men bare headed and bare footed with his boots in his hand.

Q. State whether or not there was any cursing and singing of obscene songs in the presence of the prisoners? A. Yes, sir, that was going on almost daily and at night. They were continually there cursing and singing and indulging in obscene language.

Q. You say that a great many young boys were in the force. State whether these boys were sent out to guard you when you retired? A. Yes, sir.

Q. What account did they give of the expedition and how they happened to be in the service?

Mr. BOYDEN. With what view is that evidence offered?

Mr. GRAHAM. We have a right, Mr. Chief Justice, to the declarations of anybody who were under the governor's orders as a part of the *res gestæ*.

The CHIEF JUSTICE. The presiding officer hardly thinks that you have a right to prove the declaration of a guard over a prisoner.

Mr. GRAHAM. I think, sir, that we have as much right to prove the declarations of a soldier as of an officer as to what he said in relation to the objects of the expedition, and how he came to be in it. The witness was there in the hands, as we say, of an unauthorized multitude of armed men. And we have a right to show that they were sent there by this respondent, and any thing they said, going to prove that is competent to be given in evidence in this court. In order to show the nature of the expedition, and the men who composed it, we have a right to their statements in regard to it. I respectfully submit that their declarations are within the rule.

Mr. BOYDEN. Mr. Chief Justice, the respondent issued this proclamation declaring these two counties in a state of insurrection under a claim of right as governor of the state to make such proclamation. He did it under authority vested in him by the constitution and by the act of January 27, 1870. He did this as a matter of right and as a matter of duty. Under this same power and authority, claiming it as a matter of right, he called for a military force to take charge of these two counties and hold them by it until the insurrection could be suppressed. I say he did this as a matter of right, and he supposed a matter of duty. Well, sir, what is the objection of these gentlemen? They claimed that when the governor, under the constitution and under the law for that purpose, makes this proclamation and calls for the military force, and sends that force there to discharge certain duties, everything that any subaltern or private in the army

says or does, is evidence to implicate the governor and to show that he is responsible for all misconduct. I say, Mr. Chief-Justice, that if it were a question between individuals and the respondent as an individual, had sent a man as his agent to do a certain kind of business, anything that that man does outside of what he was authorized to do, is no evidence against the respondent as the principal. But here, when it is a high officer doing this as a matter of right and as a matter of duty, it is claimed that everything that is done by a subordinate, a private outside of his duty, the governor must be responsible for. In other words, when President Lincoln organized the army of the United States and sent them into the southern country to put down the rebellion, it would be gravely contended that he was not only responsible for what the commanding general did, but for every robery and every theft and every species of plunder, and even every vile expression used by any one of the private soldiers towards an individual in the southern country, and was evidence to implicate the president of the United States, although it was outside of the duty of the soldier. Such, I say, cannot be the law. Such a doctrine cannot be maintained. It is utterly abhorrent to all our notions of authority. No, sir, the commanding general is not responsible for any of these vile deeds that are done without his consent or approbation. These are my views, and I think it clear that the testimony is wholly incompetent.

Mr. GRAHAM. Mr. President and Senators, our theory in this proceeding is different from that of the gentleman on the other side. We say that if there was a discretionary power to arrest by the military, (which we deny,) this was no insurrection, and that this was an unauthorized force sent upon an errand which the governor had no right to send them upon. The doctrine of agency which the gentlemen refers to covers the question that I desire to ask, and that is, that the governor sent forth these men as his agents to do a great wrong to the people of the country, and that any act of any one of them,

and any declaration made by any one of them, is a part of the *res gestæ*, and we have a right to give it in evidence in order that the court may see the whole scene as it transpired, and to see by what agency it was attempted, to put down this rebellion which we say never existed, except on paper. We have a right, sir, to have the whole matter read before this court as we would lay it before a jury who were the triers of the facts.

Mr. SMITH. I would be glad to have the question read by the reporter.

The CHIEF JUSTICE. The counsel will be good enough to reduce the question to writing.

Mr. SMITH. I will not wait for the counsel to do that, before proceeding with what I have to say. If I understand the purpose of the question it is to extract from the declaration of these soldiers facts connected with their enlistment, where they were from and other circumstances attending it.

The CHIEF JUSTICE. It calls for the purport of the expedition.

Mr. SMITH. Now, sir, we have made no captious objection to the development of any conduct of the officers and soldiers in this expedition to these two counties upon the idea that they were charged with being desperate men, and that the proof might be admissible with the view of showing that they carried out the natural consequences of their character. But it is perfectly well settled, on the principle of *respondiat superior*, that a man who is the principal, is only to be held responsible for the acts of the agent when they are in furtherance of the agency and that declarations of antecedent facts are never received. What is said and done, as part of a transaction, may be admissible. What is said in regard to a fact that took place previously is not evidence of the existence of that fact. A man who sends another upon some undertaking does not authorize him to do anything beyond the purposes of such agency, and thereby make his principal responsible. It is only the acts done in furtherance of the agency and to effect its objects—of that are admissible. Declarations

may be acts in every sense of the word, or they may be merely historical statements. These declarations of antecedent pre existing facts are never admitted in proof of such facts sought to be established. We object to any evidence except that which tends to show the conduct of the officers and soldiers in execution of their duty. It would be monstrous if they could be allowed to show that one of these men committed an act of murder or larceny or some other act entirely outside of the purpose of the organization, and then hold the respon dent responsible for it. It would be extraordinary, if entirely outside of any connection with the purpose of the expedition, it could be shown that any one of such private acts of wrong were done and to charge respondant criminally therefor.

Mr. MERRIMON. There can be no question that anything said or done by the officers or soldiers in furtherance of the object for which they were called into service, is competent. What they state, and what they do, is competent for any purpose in view of the charges contained in the articles. One of the charges is, the men enlisted and recruited were desperate, careless and rowdyish and outlandish class of men, and that is one charge that is a material part in this proceeding.

Mr. BADGER. Are those words contained in the charge?

Mr. MERRIMON. The substance is——

Mr. BADGER. That they are "rowdyish" and "outlandish?"

Mr. MERRIMON. Not those words, but it states they are desperate men and it is competent for us to offer any declarations, even acts of larceny as illustrating the character of the men that the governor called into service. It is competent in that view, not as being in furtherance of the common object merely, but on the further ground that we are entitled to prove that what they did and said to show their demeanor and their lawless, desperate character. That is not only so in principle, but it has been so held and ruled by the senate all through this trial. It is competent in another view. We allege that this whole proceeding on the part of the governor was lawless and

unauthorized—(and that is the ground of this prosecution)—that these soldiers were a mere mob preying upon the people of the state without the sanction of the constitution or any law. There is nothing clearer than that the proof is admissible in that view. That was the decision in the case of Lord George Gordon. What the people said when they were flocking in a particular direction—what they said they were going to do—the clamor of the crowd was allowed to be given in evidence to show the intent and purpose of that riot. To illustrate that by a plain case: Suppose fifty or a hundred men made an irruption into the state of New York from Canada to do some unlawful act—and that they were indicted for riot, would it not be competent to show that this riotous crowd, when they came surging over the line into the state of New York, said that they were from Canada, that their purpose was to come over there and perpetrate some particular act to accomplish their riotous purpose? I suppose that would be competent not only to show that they said that they came from Canada, but to show any act tending to illustrate their purpose. And then, if they allege, further in the indictment, that they were a desperate class of men, it would be competent to put in evidence any thing that would tend to show the character of the men. It is not only competent, I say, as a part of the *res gestæ*, but it is evidence which we are entitled to to show the character of these men, to show where they came from, in order to sustain the other branch of the charge that many of them came from the state of Tennessee.

Mr. GRAHAM. I will read the question.

Q. State whether or not you heard any of the guards in whose charge you may have been say anything as to their place of residence and how and where they were recruited, and what they understood to be the objects for which they enlisted and where they were to serve?

The CHIEF JUSTICE. The presiding officer is of the opinion that the evidence is not admissible. It does not purport to be any part of any act of wrong, but a mere narrative

of some past transactions, and that is excluded by all the cases. It must be something which is a part of the act then coming on or something said in furtherance of the common result. The conversation of Mr. Hill had with the guard as to where they come from and what they were told to do it seems to me is a collateral matter.

Mr. GRAHAM. I offer it as a declaration of the parties concerned during the time.

The CHIEF JUSTICE. The presiding officer understands the offer. He will state further, that he considers there is in the law books a decided difference between the relation of co-conspirators after the organization is proven, and that of the commander-in-chief of an army and his subordinate officers, and especially his privates. One is conspiracy, and the other is the relation of principal and agent, to be looked at in a rather different point of view, from the fact that one being commander-in-chief, he can only be responsible for such orders as he gives, or such orders as he approves of and recognizes, or that the court may suppose he approved of by his subsequent conduct.

Mr. GRAHAM. That assumes, Mr. Chief Justice, that these persons were a lawfully organized force.

Senator EDWARDS. Differing as I do very widely in the opinion which has been announced by the presiding officer, I desire a decision of the question by the Senate.

A sufficient number seconding the call,

The CHIEF JUSTICE put the question on the admissibility of the question proposed by Mr. Graham, and it was decided in the negative by the following vote:

Those who voted in the affirmative are:

Messrs. Allen, Council, Currie, Edwards, Graham, of Orange, Ledbetter, Mauney, Merrimon, Murphy, Robbins, of Davidson, Skinner, Waddell, Warren, Worth—14.

Those who voted in the negative are:

Messrs. Albright, Barnett, Battle, Bellamy, Brogden, Brown, Cook, Cowles, Crowell, Flemming, Gilmer, Graham, of Ala-

mance, Hawkins, Hyman, Jones, King, Latham, Lehman, Linney, Love, McClammy, McCotter, Morehead, Price, Robbins, of Rowan, Speed, Troy.—27.

The WITNESS. I will state in connection with one remark I made that Mr. Stevens had two very important suits in which brother Kerr and myself were associated together for him.

By Mr. Graham, [resuming.]

Q. Did anything take place on the day of the election of a remarkable character? A. Yes, sir, the day of the election the several prisoners felt very reluctant to go out and vote under guard but we finally determined to do so. Col. Kirk informed us that we could vote if we saw proper, and he called out a company. I think there were fully thirty men with fixed bayonets and he marched us out together under that guard—a line on each side of us. There were perhaps more than thirty—I do not know the exact number. But we were carried to the polls. Kirk was at the head of the company. He did not have on his sword though he perhaps had his uniform on. He did not have any pistol—at least I do not suppose he had any on.

Q. State whether there were any troops about the streets during the election? A. Do you mean Kirk's men?

Q. Yes sir. A. They were going about through the streets on the day of the election. I don't recollect of seeing any going armed except those who went along when the prisoners were going to vote and those who were standing guard.

Q. You were carried from Yanceyville where? A. About a half hour before we started—perhaps longer—I received a note from Mrs. Stevens informing me that she had sent over a horse and buggy by a servant to carry me over. I had no means of going and had made no arrangements. The first night we went some eight miles from Yanceyville and encamped. The next day we proceeded to Company Shops and arrived there about 12 o'clock. It commenced raining and rained all the way and was raining when we got there. We

staid out in the rain until we could put up our tents; they gave us tents and some six or seven of us occupied one tent and the rest the same way. Some of our friends in the neighborhood sent us blankets. I think we staid two days and two nights there—I do not remember exactly—and then were put into box cars and sent from Company Shops to Graham depot. This lane from Graham depot to Graham is a red mud lane, exceedingly muddy, and we marched through there in the dark, and it was very disagreeable. We were carried into the court room up stairs and placed there.

Q. How long were you confined there? A. I think we came over on Sunday and we started to go to Graham on Tuesday night —I do not remember the exact day—and we stayed there several days, kept under guard the same as at Yanceyville, with sentinels stationed at the door of the court room and with guards attending us when we went out.

Q. State whether any persons were taken out and committed to jail? A. I can only say this, that I was talking with Mr. Turner at the time the guard came in and called over the names and they were taken out of the court room and carried towards the jail. I did not take any particular notice, because I knew what they were going to do with them.

Q. Did they come back into the court house during your stay at Graham? A. No, sir.

Q. Who were they? A. Mr. Wylie, Mr. Weedon, Mr. Turner, and, I think, a man by the name of Gray were the four.

Q. Did you see any exhibitions of violence to any one of the prisoners and if so state them? A. I only saw one. One day Captain Franklin came to the jury room. I was standing by the window. We had blankets on the floor and Mr. Moore and three or four persons were lying on them talking. I was standing close by the window. Captain Franklin came and he seemed to be excited and he drew his pistol suddenly and cocked it, and said "You d—d scoundrel you call me a horse "thief do you? I will shoot you." I caught him by the hand and said he ought to be ashamed of himself for using this

violence to an unarmed prisoner, and I think I prevented him, with the aid of some other gentlemen—I don't remember who but I believe Mr. Fowler. I used some other efforts to prevent his violence when he broke from me and stepped up to Mr. Moore and struck him across the head with his pistol. That is the only violence I saw while I was there.

Q. The pistol was pointed at Mr. Moore who was lying on the blanket? A. Yes, sir.

Q. With a threat that he was going to shoot him? A. Yes, sir.

Q. After Mr. Moore raised up he struck him on the back of the head with a pistol? A. Yes, sir, he was rising at the time and was not fully up.

Q. Was it a pretty violent blow? A. I cannot tell. Under the excitement I did not notice much about it and I do not know as I can say.

Q. Were you taken to Salisbury? A. I was brought to Raleigh. It was the second time I had seen Col. Burgen and he had a horse and buggy and he very kindly offered me a seat in his buggy to the depot from Graham court house.

Q. That is while you were coming here? A. Yes, sir, while I was coming here.

Q. And were you discharged here? A. I was discharged here I presume. I did not go in the court room.

Q. Was any charge made against you? A. None that I ever heard of or saw, except what I saw in the paper.

Q. Was any affidavit made containing charges against you? A. None that I ever saw.

Q. Have you an extensive acquaintance in the county of Caswell? A. Yes, sir.

Q. Was there a peaceable condition of things between the blacks and whites in that county? A. I think there was, as a general thing.

Q. Among the white and black people? A. Yes, sir. There were exceptions, but I think as a general rule the feeling was good.

Q. State whether or not the colored people made contracts with the whites in the business relation between them? A. I drew some contracts between them and I saw them employed working on the farms and plantations for the whites.

Q. Do you know of any resistance to the law in that county? A. I never heard of one instance.

Q. You are practising your profession and have occasion to issue processes of various kinds. State whetheror not you know of any resistance to a process in that county? A. I never heard of any and don't know of any. Perhaps I should say that I did not see parties when arrested.

Q. Were there magistrates in the county? A. Yes, sir, I had business to execute in every township in the county and I never found any difficulty.

Q. In the township in which Yanceyville is were there magistrates there? A. Yes, sir. Mr. Stevens was a magistrate in his lifetime, and then there was a Mr. Cook who was a colored person. After Mr. Stevens' death, Cook transacted most of the business It was some time before we had another magistrate. The superior court then appointed Mr. Bowe as a magistrate and he has been acting as a magistrate since that time as well as Mr. Cook.

Q. Was any resistance made to the execution of a process issued by Cook? A. I never heard of any and never saw any

Cross-Examination.

By Mr. BOYDEN.

Q. You say that in your judgment, in the main, there is good feeling between the whites and the black? A. Yes, sir, as far as I know.

Q. But there were exceptions? A. Yes, sir, I had knowledge of some exception.

Q. Do you know whether there was not a public declaration often made that if certain colored people were employed by the white men, they would burn down their houses? A. I never heard any such declaration.

Mr. GRAHAM. I object to the question. I do not think it is competent evidence; but as the answer is in we will not dispute the point now.

Q. Do you know that there was a public meeting held by white persons in which they resolved not to give over a certain price for colored labor? A. I have no knowledge of it. I attended no such public meeting and I have no knowledge of any.

Q. Do you know of any paper being numerously signed insisting that they should not employ colored people on their farms?

Mr. GRAHAM. I object, Mr. Chief Justice, to the evidence. It does not prove insurrection if the fact be true.

Mr. BOYDEN. I offer the proof, Mr. Chief Justice, on the subject of good feeling which they have been endeavoring to prove themselves. I think if we can show that there was a paper numerously signed insisting that colored men should not be employed, it would tend very strongly to show that there was not a very good feeling between the whites and the blacks.

Mr. GRAHAM. It would show, sir, what we often hear of in the north, of capitalists endeavoring and combining to keep down the rates of wages of their employees; but it does not show an insurrection against the government. Manufacturers may agree that they will give only so much per day; but that act does not make those manufacturers insurgents. And operatives may combine and say they will not work for wages less than a certain amount, and their combination does not make them insurgents. It is simply a controversy between the employers and the employed, to see which will get the better of the other, in the question of wages, one seeking to have wages lower and the other seeking to get them higher. Admitting the fact as alleged, it sheds no light on the question of whether there was an insurrection against the government, and neither does it prevent the law from having its force.

Mr. BOYDEN. The gentleman does not seem, Mr. Chief Justice, to understand the point. He seems to have forgotten

that he has been asking this very witness if there was a kind feeling between the whites and the colored people whom they employed. In view of that fact, is it not a proper question to ask the witness if there was a paper prepared and numerously signed protesting against the employment of colored men, and insisting that they leave the county? I don't pretend to know the exact wording of the paper—but is it not proper to rebut the idea which is sought to be enforced that there was a kindly feeling between the two races?

Mr. GRAHAM. Mr. Chief Justice, the evidence which has been offered on the part of the managers was designed to show that there was such a kindly state of feeling between the two races, that the blacks need be under no fear of violence from the whites. A combination to get labor as low as possible is consistent with a state of society free from all violence. When either capitalists or laborers combine in their own interest, it does not tend to show, in the slightest degree, that there is insurrection.

The CHIEF JUSTICE. The presiding officer is of the opinion the evidence is admissible, not on the ground of showing an insurrection, but to reply to the proof given to show that there was a kindly feeling existing between the colored people and the farmers.

By Mr. BOYDEN, [resuming.]

Q. I ask you if you have ever seen or known of any paper signed by numbers of persons ——

Mr. GRAHAM. We object also on the ground that the paper itself should be produced.

The CHIEF JUSTICE. You cannot prove the contents of a paper in the first instance without the production of the paper itself. You can, however, prove the existence of a combination.

Q. Do you know of any combination existing for the purpose of fixing the prices which should be paid to colored men employed by the whites? A. I only know this, that there were some three or four gentlemen who suggested something of that

kind, but the movement broke up because it could not be made general.

Q. Was it not general among the landholders? A. Not in our county.

Q. Was that an understood thing in the township which Yanceyville is situated? A. No, sir, that was what broke it up. They could not get men to agree to it.

Q. They abandoned it? A. Yes, sir.

Q. Don't you think that effort showed some ——

Mr. GRAHAM. We object to the opinion of the witness.

Mr. BOYDEN. You have been asking all along for the opinions of witnesses to know whether there was not a kindly feeling existing between the whites and the blacks.

The CHIEF JUSTICE. The presiding officer does not think the question is competent. It is for the court to draw an inference from the testimony.

Q. You say you were in the court house on the day that Stevens was murdered? A. Yes, sir, I was in the court room that day.

Q. You were in the public meeting? A. Yes, sir.

Q. Did you see Stevens in the meeting? A. I did not. I sat inside of the bar. If he was in there he was behind me and I did not see him. I saw him in the morning when he first came from his house.

Q. You did not see him in the court room while the speaking was going on? A. No, sir, and no more during that day, except when he first came to the village.

Q. How early—at what time in the evening did you learn that he was missing? A. I think I was in my office reading. I had had my supper. It was about dark when a servant came from his wife to me.

Q. I will go back to the meeting a moment. Did you hear Mr. Hodnett address that meeting? A. Yes, sir.

Q. Did he employ in that meeting terms of strong denunciation against Stevens?

Mr. BRAGG. We object to the question. The witness should be asked what Mr. Hodnett said.

Mr. BOYDEN. But the gentleman is not our witness, Mr. Chief Justice, he is the witness produced by the Managers, and we have a right to question in any form we please.

Mr. BRAGG. But you ask him if he employed terms of "strong denunciation." You must ask what terms he did employ. Your question calls for the opinion of the witness and not the words. It is for the court to draw the inference.

Mr. BOYDEN. I am willing that that rule shall be established, and I hope that the gentlemen themselves will be confined to it.

Q. What language did he use? A. He was speaking of Mr. Stevens having been engaged in a police force or a detective force rather. I do not recollect the precise language, but it was pretty severe I know the impression it created on my mind, without recollecting the language, but there was no violent or rude language.

Q. But it was very severe? A. He commented upon it as ——

Q. Didn't he say that Mr. Stevens was a hired spy? A. I do not remember that language; he may have said so. I stated that the exact language used at the time I did not remember.

Q. I ask you if there was not a very bitter indignation excited against Stevens during that debate? A. I do not know that it was intensified during the debate beyond what it was before.

Q. How was it before? A. He had excited the colored people about wages, issuing warrants, and had got up a bitter feeling in that way; and he would dismiss warrants issued for misconduct; and I think these things had excited a feeling against him.

Q. You entered the room at the time the coroners inquest was being held? A. Yes, sir.

Q. Where did you see the body, and what was its condition?

A. The body was lying on some wood that was cut up, and was on the north side of the room. There had been some wood taken out, and he was lying doubled up in the valley made by taking out the wood. That was where the body was.

Q. Anything about his neck? A. Yes, sir, a rope with a noose around his neck evidently to strangle him, and there was a stab on each side of his throat, and his breast had been opened, and there was a stab near his heart. My recollection is, that he had evidently been stabbed where he was from the appearance, because his hand was in that position, and the blood had spirted from his heart on the wall.

Q. Jets of blood? A. Yes, sir. It showed to my mind that he had been stabbed where he lay. There was also a knife that had been used to stab him by whoever had committed the act, and had been left there.

Q. Do you know who kept the key of that room? A. No, sir, I do not. I rarely ever went in there except to see the the clerk in equity and master, who occupied it.

Q. Who occupied the room next to that on the day of this public meeting?

Mr. MERRIMON. That was objected to yesterday and ruled out.

The CHIEF JUSTICE. That class of questions was not admitted.

Mr. BOYDEN. I had forgotten.

Q. [By the Chief Justice.] There were several rooms on the floor? A. Yes, sir, they were occupied by different officers of the county.

Q. Was there a large gathering that day? A. Yes, sir, a pretty large gathering, I have seen larger though.

Q. Several hundred do you think? A. Yes, sir, some hundreds, I do not know how many.

Q. State if you know of any other person having been murdered in that county? A. I have no knowledge.

Q. Do you know of any one that had been whipped? A. I

only know from the fact that persons who were bound over came to me to defend them.

Q. Did you see any of the bodies of the persons who had been whipped? A. No, sir, I never heard any complaint of any such thing.

Q. Is there any bill found against anybody for the murder of Stevens? A. Not to my knowledge. I think it due to myself to say that I abandoned the case when Kirk came. I informed the family that I could no longer appear for them in the case.

Q. Do you know a man named Robbin Jacobs? A. No, sir, I have never heard his name that I knew of.

Q. Has there been any indictment against anybody for the murder of Robbin Jacobs? A. Not to my knowledge.

Q. Has there been any indictment for the scourging of colored men in that county? A. None that I know of.

Q. I do not suppose that you are a member of any such organization, but I desire to know if you know of any secret political organization in the county of Caswell named either the "Kuklux Klan," the "White Brotherhood," the "Constitutional Union Guard" or the "Invisible Empire?" A. I never heard of any of them except the Kuklux until I was arrested. I have no knowledge of any of them, and I never heard of any and much less knew it, except the Kuklux from Boyd's confession.

Q. You never heard of them until you were arrested? A. Mr. Boyd's confession was the first I ever heard except the Kuklux.

Q. You had heard of the Kuklux. A. Oh, yes, I had heard of them, but not as being in Caswell.

Q. I ask you if they had in Caswell to your knowledge what were called vigilance committees? A. No, sir.

Q. You know nothing of them? A. No, sir.

Q. You know of no attempts under that name to chastise persons for having committed offences? A. I know nothing of the kind.

Q. What political party do you co-operate with? A. With the democratic party.

Q. Were there any other violent speeches made there except Hodnett's, in which very severe language was used? A Not particularly towards the colored race. There was some pretty strong ones against the republican party, and I think I helped in that matter myself.

Q. I mean as to Stevens? A. No, sir, I did not hear Stevens mentioned that I remember by any one else.

Re-Direct Examination.

By Mr. Graham.

Q. You were asked about a secret organization. Do you know of one known as the "Union league?" A. I have seen persons parading who told me they belonged to that party.

Q. Composed of colored men or were there white men among them? A. I don't know as I ever saw a white man among them. I do not remember to have seen any.

Q. In regard to murders in the county, I ask you whether or not you have any knowledge of Mr. Stevens' mother being murdered and being found dead in his own house with marks of violence upon her? A. I have no knowledge myself. I did not attend during the investigation by the coroner. He is here—Dr. Yancey.

Q. You have spoken here of a feeling of indignation against Stevens? A. Yes, sir.

Q. State the nature of it, whether he was considered as being instrumental in inflaming the blacks against the whites? A. I think that was the cause. It was understood that he had advised the negroes to burn barns. That was generally understood all over the county, and that intensified the feeling against him.

Q. That was the cause of the indignation? A. That was to a great extent the cause of it.

Q. You were inquired of whether you had known any indictment against anybody for the murder of Stevens. State whether you were in court and heard the solicitor make any

remark on the subject? A. I was not in court when the prisoners were discharged and I did not hear the solicitors remarks.

JESSE C. GRIFFITH, *a witness on behalf of the Managers, being recalled, testified:*

Cross-Examination.

By Mr. BOYDEN.

Q. It has been suggested to ask you this question. Whether you, the sheriff of the county, did not threaten that if certain colored men were employed by the white people, you would raise a company and burn down the houses? A. No, sir. Here is what I did say——

Mr. BRAGG. To whom and where.

Mr. BOYDEN. The witness evidently understood what the question refers to. Why should he not have an opportunity to answer and explain what he did say.

Mr. BRAGG. We understand the rule to be that where a witness is asked if he made certain statements, the time and place and to whom must be specified.

Mr. SMITH. The counsel may take his exception when we attempt to contradict the statement of the witness. It is not admissible to make the objection now. When we come to contradict him by further testimony, then the question under the rules of evidence may be raised that we did not call the witness' attention to the time and place. But the witness, from his last remark, evidently knows what we are seeking to call out and I think the question should be allowed.

The CHIEF JUSTICE. The witness says that he never made any such statements but he proposes to tell what he did say. I think he has a right to state so.

Q. Explain what you did say? A. While I was in prison the league assembled and marched around, commanded by the officers of the league, and in the presence of the prisoners groaned after we were turned out and I got home. I was indignant at such proceeding, and was at the time, and I was

opposed to employing these leaders who would treat prisoners with such contempt, and I said I was one man that would go in the day time, not as any Kuklux, and tear down the houses that any man would rent to them.

Q. [By Mr. Merrimon.] It had reference to the men groaning at you on the occasion of this parade? A. Yes, sir, and to the officers in command.

By Mr. Graham.

Q. Were Kirk and his men there at the time? A. Yes, sir.

Q. And heard this groaning? A. Yes, sir.

Q. Did they interfere in any way? A. No, sir.

Q. You did not see any attempt to prevent them? A. No, sir.

Q. Or attempt to make them go away? A. No, sir.

Q. How long were they groaning about there? A. They were parading about one or two in the evening, and afterward they came around the court house and groaned at us.

Q. Under the command of officers? A. Under the command of the league. I considered it a great indignity.

JOHN KERR, *a witness called on behalf of the Managers, being duly sworn, testified as follows:*

By Mr. Merrimon:

Q. Be kind enough to state your name, your occupation and your residence? A. My name is John Kerr, I reside in the county of Caswell and I am a lawyer by profession.

Q. State whether or not you saw any armed men during the last year in Caswell, if so, under what circumstances and whether these armed men arrested you, if so, for what purpose, and all you know in reference to your arrest? A. On the eighteenth of June last, I saw a number of armed men march into the town of Yanceyville under the lead of a man whom I afterward understood was George W. Kirk. As they came into town I was on the public square having some friends with me. I was at home at the moment of their first arrival. I came to the front and saw them as they marched

to the court house gate. I saw but little of them then. As I walked out I saw them surrounding the court house and saw sentinels at the gate and a flag which they bore floating in the breeze—I had gone out with a view of going to hear the public addresses which General Leach and General Scott were about to deliver, but when I saw this military array about the court house, I returned and went to my residence and went into my own private chamber and there stayed for a few moments with my wife. She came in with the two youngest children—no, not the youngest, but two of our small children. While I was sitting there this man whom I ascertained afterwards to be Yates came and enquired if my name was Kerr. I told him it was. He told me that I was his prisoner, and I must consider myself under arrest. I asked him by what authority; he said by authority of General Grant and Governor Holden. I went out of my room with him and when I got to the door I found another man. I did not know who he was, but as I walked out he rushed into the passage of the house and seemed to be disposed to evil. At all events, this man Yates checked him, and took me by the arm and walked with me. I walked out of the door and went towards the court house, and he carried me into the room which Mr. Hill has described. There I found Dr. Roan, Mr. Neal and two or three other persons who had been arrested before me. In a few moments they brought in Dr. Yancey, and then they brought in Mr. Bowe under the circumstances which Mr. Hill has described here, and during the course of the evening they brought in many others. We were about an hour or an hour and a half in that room. There was a great deal of excitement out of doors under the windows. I stepped to the window casually without having any purpose, when one of these soldiers out of doors raised his gun and told me to get out of the window or he would shoot me down. I made no reply; I did not go away very promptly, but I did go towards Mr. Bowe, who was sitting in the position you have heard indicated by Mr. Hill.

Q. What sort of a scene was it? A. Shortly after I got into the room, and after the arrival of Doctor Yancey and others, we heard a noise inside the court house—a reverberation of the building, and I inferred, and I think the others with me, that there was a general fight up stairs. It is a large edifice, and the reverberation was very great. There was a noise and confusion, cursing and ripping, and we thought there was a general fight, and some of us remarked that there was a general fight. In a few moments we heard the voice of Mr. Bowe. They brought him in. He seemed to be very indignant, and they charged him with having weapons. He told them he had no weapon. Then they cursed him more. He hurled defiance at them. I never knew a man to behave with more spirit. He defied them. They demanded that he be searched. He told them he had no weapon, and was not a man that carried weapons. They made a search of him. He was defiant and repelled them I thought with very manly, but unhappily ill-timed, indignation; and I went and told him I thought he had better not indulge in that strain.

Q. Who is Mr. Bow? A. As soon as I said that, Mr. Bowe took my advice and acted accordingly. Mr. Bowe is a gentleman I have long known, he has been a magistrate for many years.

Q. What is his probable age? A. I think he is about sixty-three according to my recollection—in fact he has told me so very recently. I have known him nearly forty years. He is well known to us in the county of Caswell. He filled the position of justice of the peace for many years with great acceptance before the war, and during the war—no, I don't know that he did during the war—but after the war the confederate authorities gave him ——

Q. Do you mean the confederate or federal authorities? A. The federal authorities I mean, gave him an appointment there and he filled an office in the freedman's bureau, I believe they called it for some time. He has been elected one of our county commissioners and was a commissioner at the

time of his arrest and is now. For a time he was chairman of the county court. I don't suppose that any man in the county of Caswell has any more respectability of character than he.

Q. Is he a pious man or not?

Mr. SMITH. We object to that. A. He is a very exemplary man and certainly a member of the church.

Q. Go on with your account? A. We were taken to the court room where we were confined for four weeks. I don't know hardly how to proceed, I might consume too much time.

Q. State the demeanor of the troops as well as you can, to the prisoners? A. I can only speak of their general demeanor. It was apparent that day to me that the troops were under the influence of spirituous liquors—that they were drunk. That was my impression. When I was under charge of this man Yates I told him that the troops were drunk that day, and he said it was a fact that they were drunk when they got there. They were acting as men usually act when they are under influence of intoxication. When I went up in the room with my fellow prisoners, I was walking a little outside of the bar when one of the soldiers accosted me very rudely and required me to go back in the bar, with his gun in hand. I did so. I do not know whether he did that by any order or not. They were all on that occasion apparently under the influence of a high degree of excitement any they acted with a rude and insulting demeanor, very much so indeed by the expressions I heard not only to myself but to others. They were angry. Their manner was of an angry, rude and provoking character during that day except this man Yates who, to me, was civil and polite. He did not offer me the slightest indignity and he did rebuke this man at my door. And when he was carrying me on to the prison, I heard him say in an authoritive tone, "Behave yourself, sir!"—"quit that, sir!"—"he is under my charge"—"behave yourself!" I don't know to whom he addressed himself at that time.

Q. What was the discipline of the troops? A. There was literally no discipline—none whatever that I could see. Kirk

on more than one occasion said in my hearing in the court house that he could not control his troops, that they were under no discipline—that they were not under his command. So far as Kirk is concerned, I never saw the man until that day when he came into the room at the time Mr. Bowe was brought in, and I did not know who he was. I had occasion to speak to one of the officers whom I supposed to be Burgen as I had understood that Burgen had brought in some prisoners and I said is this Colonel Burgen, he said "No, sir, I am Col. Kirk." That was the first time I learned his name. He carried us up stairs that day. I don't remember anything that occurred especially then, but repeatedly during our confinement he come to see us, sometimes behaving himself quietly but frequently, however, he was in a very high degree of excitement and anger. On one occasion he came up—I suppose it was the same occasion to which brother Hill has alluded—and assembled us all around him and he said he had received creditable information that an attack would be made upon him by a force from Danville and he said if there was an attack he should shoot down the prisoners. I don't know how it was, but I was a sort of spokesman on that occasion and I asked him what reason he had to suppose there would be such an attack; he said he was credibly informed of it. We told him that we knew nothing of it and we did not believe there was anything of the sort in contemplation, that it did not accord with our wishes for our friends to undertake any such thing for our release. He hectored and bullied a great deal making use of a great many expressions of rudeness and repeating that if there was any such attack he would cause every prisoner to be shot down. My recollection is that I said "Really you can-"not feel yourself justified in having a parcel of men who are "under your custody shot down when they are in no wise "chargeable with any attempt at their rescue." I don't know the exact reply he made but I do recall an expression of my brother Hill. I remember he become a little indignent and he told him that "if that is the case—if you

"are going to do that—why then shoot us and take the "responsibility of shooting us—if that is the way you are "going to do take the responsibility if you think proper and "put a parcel of prisoners to death." That seemed to soften him and he replied to us in this wise; "If you gentlemen, or "you prisoners—I don't think he said gentlemen—I think he avoided every such phrase—" if you prisoners will promise in the event of an attack you will obey my orders and stand "where I tell you to stand, and take no part in the "assault, I promise you protection." I told him we would do that—I told him that I for one would do it and that I had no hesitation in saying we would all do it. He said if we would do that he would give us protection—if we would obey his orders. That was in reference to the assault he seemed to anticipate from the quarter I have alluded to—Danville. He came up again on one occasion—I remember it very distinctly—and called us together and told us in a very insulting and angry tone that he believed—this is his very language—"that every d—d one of us knew all about and that we were every one of us concerned in the killing of Stephens" or knew all about it. Of course we indignently repelled that. We told him it was not so. He remarked that if we did not kill him we knew who did and we could disclose. That of course we repelled as we felt ourselves called upon to do. He repeatedly reiterated that charge and that kind of insult. He came into the room under excitement such as I have already described and offered this sort of indignity and insult to us.

By the CHIEF JUSTICE.

Q. Was he drunk? A. No, sir, he was not drunk. I have reason to believe that he is a perfectly temperate man. He told me he was, and I have seen several of our prisoners offer him drink, and he refused.

Q. He is very passionate? A. Yes, sir, very passionate. I don't think he is a drinking man. I think what he says on that subject is perfectly true. He says he does not, and I don't believe he does.

By Mr. GRAHAM, [resuming.]

Q. Did he make any threats against the town, and the women and children, and if so what did he say to you? A. I was hesitating as to the time when he made the threat, whether the time I allude to when Mr. Hill made that remark or another occasion; but my impression is it was at the time Mr. Hill made that remark that I have just repeated. He said that if any resistance was made, or rather any attempt at a rescue was made, he would burn the town and put every prisoner to death, and with an oath he said he would destroy the women and children. He used that language, and as I understood him, he said that those were his orders—that he was ordered to do it if any attempt at a rescue was made.

Q. What became of you after that? A. I remained there about three weeks I think in close confinement, occasionally going across to my own residence under the charge of an officer. In the course of my confinement in the prison, Kirk came one morning at the head of the stairs and got in conversation with me. He was in good humor and he remarked that he was in good humor. He said he was a passionate man and subject to excitement, and in the course of this conversation with him, to which I now refer, he said that he was disposed to treat me much better than his orders allowed him to do. He said, "I am allowing you more privileges and "treating you with greater indulgence than I am authorized "by my orders to do." That he repeated to me several times. Then he took me into a window on one occasion and remarked to me in almost the identical terms that I have repeated, that he was disposed to grant to me indulgence or some such phrase "beyond his orders." He said "I am a married man, sir, I have a wife and three "children. I have learned your situation. You have a family "of small children. I am not this savage brute you have heard "me represented, and I know how to sympathise with a gen-"tleman in your situation." He made that remark to me and then repeated that he was showing me an indulgence that his

orders did not justify, and that he hoped, if I was ever called upon, I would do him justice in regard to that. I told him certainly I would do it, that if I had an opportunity, or ever was called upon, I should do him justice to say he had treated me with courtesy. And he never did do any discourteous act to me individually, although I, of course, was included among all the other prisoners in the general insults and outbursts of passion and offensive utterances which he indulged in at times. But to myself, individually, he never did offer an insulting expression that I am aware of. He said there was no charge against me—that he had never heard any charge against me—that he had arrested me because he was commanded to do it, but that he knew no charge against me in any respect.

Q. State whether he said anything, if so, what, about the manner in which the prisoners were to be disposed of? A. He repeatedly said that they were to be tried by a court martial, and he often told us the day on which they were to arrive. He said frequently that they were expected at Yanceyville—I forget now the dates, but he indicated them.

Q. Who was to arrive? A. The court martial. He said that he had sent the ambulance on more than one occasion to meet them at the depot known as Ruffin's depot, but he was disappointed. I heard him express disappointment at their not coming. He said on more than one occasion he expected the court—that it had been promised but that he been disappointed repeatedly, and he seemed to very impatient about it.

Q. State whether you were taken from that place, and if so to where? A. I was. The week before the prisoners were taken to Alamance I was paroled by Kirk. Doctor Roan, Mr. Neill, Mr. Jones, Mr. Bowe, myself and perhaps some others—I don't remember just now—were paroled and we were permitted to stay at our homes and to report daily. When they left for Alamance the prisoners were carried back. I did not leave home with the prisoners but I left the next day. They left on Saturday—I forget the day of the month, but some day in August, and I left on the next day, Sunday, and came over to Ala-

mance by a private conveyance in company with another fellow prisoner who had been paroled like myself. We came to Kirk and reported to him at the Shops and he continued to let me go at large on parole. The other prisoners remained at the Shops a short time and then he required us to report to him at the town of Graham which we did and we remained there until it was made known to us that we were to come to Raleigh. Then we were all summoned up to the court house on one occasion and I found this man Burgen there who called over a list that he had in his hand in which my name was among others, and any in that list were to come to Raleigh that day. We went to the depot, got into a coach and came on to Raleigh arriving here about three o'clock in the afternoon where we were transferred by Burgen to the custody of Judge Clarke.

Q. Colonel Clark? A. Yes, sir—then acting as colonel—against the angry protest of colonel Burgen who cursed Clarke and Holden and the whole concern on the occasion. Colonel Clarke took us unto the rail road depot and told us be seated. We took our seats all around and he made us a very handsome speech explaining how painful it was to hold us prisoners and how kindly and courteous he intended to treat us, but he said if you gentlemen attempt to escape—at that point my friend Hill interrupted him and said "Escape sir, all you soldiers could not drive us from here." I told Hill to sit down and Mr. Hill did sit down, when Clark replaced his right foot in the hollow of his left and again said, "If there is any attempt "to escape"—when Mr. Hill again said "There is no escape "from here—you cannot drive us away." We then got into an omnibus and he told us to go with Major Miller who took us to the Hutchings house and treated us with great civility, as did all the subordinates. They were specially polite to us, and Major Miller particularly so, and all the persons connected with the military here at this place were. I never saw men who acquitted themselves with more propriety than they did under the circumstances. Clarke, Miller and the other officer—I for-

got his name, but he was equally civil and equally polite, and so were all the subordinates, every one of them. I remained there only a very short time. By the kindness and hospitality of Major Jones, of this city, I was taken to his private residence on Friday or Saturday morning, I forget which; I think we came on Thursday. I forget what day it was I was discharged, but my discharge bore the signature of Judge Dick. I was carried before his honor, Judge Pearson, and was informed at the time there was no charge and no evidence against me.

Q. How long were you imprisoned? A. Five weeks, I think.

Q. State whether you remember the day on which it was alleged John W. Stevens was killed, and if so, whether there were any strangers about the court house, and whether there was any one of them you took to be Burgen or the man you afterwards learned was Burgen? A. The day on which John W. Stevens was killed was, I think, on the 4th of May. My memory has been recently refreshed in regard to that point. It was a day to be remembered by the fact that it was appointed to hold a public meeting of the democratic party to nominate their candidates. That meeting took place at the court house, and was a meeting that was pretty largely attended by the citizens of the county. I am not able to say there were strangers in the town that day or not. I did not see them, I only heard it. It was told to me that there was strangers. I have no recollection of seeing anybody in the village except citizens of the county.

Q. State whether at any time you were present in court when any person was called upon or bound over to answer for having killed Stevens, and if so what was said in that respect? A. At our last term of the court, when the term was pretty well along—the judge left pretty early in the term, I think on a Wednesday of the first week—the attention of the court was called to the case of the State against Felix Roan, Frank Wylie and James Mitchell, who had been bound over by his honor, Judge Pearson, to appear at that term of the superior court, to

answer to the charge of the state against them for the murder of John W. Stevens. My brethren Watts & Withers were of counsel for these gentlemen. In my presence, in the court, Mr. Bulla, the solicitor for the state, arose and made a statement in substance, as follows: that he had not sent in a bill in this case, that he had examined the testimony, and from the examination he had made, he had no hesitation in saying that no grand jury would find a bill upon such testimony, and that he should not send in a bill upon any testimony that he knew of or was able to command. That is the substance of this statement in court. Upon that my brother Watts moved that the defendants be discharged, and they were promptly discharged by the court. Mr. Bulla's statement was, that he had examined the evidence, and that he did not think it was sufficient to justify a bill, and that he had not drawn any.

Q. Was there any proposition made to rebind these parties? A. Not these parties to my knowledge. There was no proposition to rebind them—no motion of that sort.

Q. Were they discharged? A. Yes, sir.

Q. By whom? A. By Judge Tourgee.

Q. What is the politics of Judge Tourgee and Mr. Bulla? A. They are both well known members of the republican party. Judge Tourgee has taken a prominent part as a politician and has made speeches repeatedly in that country as well as other portions of the state, leaving no ground to doubt as to his party affinities. Mr. Bulla I know to be a member of that party from frequent conversations with him.

Q. Had you a general acquaintance among the people of Caswell county in the year 1870? A. Yes, sir.

Q. And for how long before that? A. Thirty-nine years I have lived in the county.

Q. Do you know many colored people? A. I suppose I know as many as anybody else of my age.

Q. State the relation existing between the colored people and the whites in that county during the year 1870 or any time before that? A. It was generally very kindly indeed.

Q. Was there any hostile feeling existing between the two races? A. No, sir, in general there was no feeltng of that sort. There are some individuals against whom some charges of hostility were averred. But in general the feeling between the two races was a kindly one. They are employed as heuse servants and field servants and renters and joint farmers with the white people in the county

Q. State if you know of any insubordination to legal authority in your county? A. I don't believe there is a more law-abiding community in the world, and never has been. I have never in my life known any community more uniformly submissive to the constituted authorities. That has always been my impression and I have no reason to modify that opinion of late.

Q. State whether you know of any outrage in your county since the killing of Stevens? A. I know of none.

Q. State whether there were any federal troops at any time in the county of Caswell? A. The same week, or the week before the arrival of these Kirk forces, we had a federal company there numbering eighty or ninety persons, under the command of Major Rodney and Captain Fields.

Q. Do you know whether at any time these troops were called upon to aid the civil authorities? A. Never to my knowledge.

Q. Do you know what they were there for? A. They were there, as they informed me, to aid the civil authorities—to render any aid that might be necessary to the civil authorities.

Q. How long did you say they were there before Kirk arrived? A. I think about eight or ten days. I am not accurate. I heard some gentlemen say that they were there about a week.

Q. How long did they stay there? A. They remained there until the first of October, a portion of them. A part of them left a short time after Kirk's troops left but another company remained longer. They then came to this city and are here now.

Q. State if you know whether any action was taken in reference to the death of Mr. Stevens and if so how soon after and what was done? A. The death of Stevens, as you have heard described, became known in the village early Sunday morning. Shortly after breakfast I walked out across from my residence to the store house of McKee & Harrison and just in front I found Doctor Yancey the coronor. It was an early hour; he said he had come up for the purpose of taking steps to investigate the death of Mr. Stevens, and according to my recollection he commenced immediately to summon a jury and did summons the jury and went into the court house with it. I did not go in with him. He commenced the investigation, and after they got through with the inquisition upon the body itself they went into the court room above to hear the testimony of witnesses. I went up there myself. I said there for some time. I heard the examination of the witnesses. I think that the coronor of the county acted with a promptness becoming his official obligation. There was no delay about it.

Q. Did the people of the county take any action? A. A meeting was called the next day—Monday I think—of the citizens in and about Yanceyville. We got up a pretty good meeting and it was attended by some of our most respectable citizens. I remember the late lamented Colonel Brown was present and we adopted resolutions which he advocated as well as myself, and which were published to the world expressing our abhorance of such a deed in our community and declared ourselves utterly opposed to all such violations of law and of all secret political organizations whether called by one name or the other. At the time, we supposed his death might possibly have resulted from some of these organizations and we denounced them. I did it myself with great sincerity and I think Colonel Brown did with great sincerity.

Q. Were the proceedings of that meeting given to the world? A. Yes, sir, they were published in the *Sentinel* here and given to the world at large, and they were afterwards noticed in the *Standard* according to my recollection.

Q. If there is any other matter, we have not touched upon you we are at liberty to state it? A. I don't remember anything specially.

Cross-Examined.

By Mr. Smith.

Q. Were you at the political meeting the day before Stevens was found murdered? A. Yes, sir, I suppose I was a sort of leader in the meeting.

Q. Did you see him in that meeting? A. I did. I saw him sitting in the court room among the audience.

Q. Did you notice when he left? A. I did not.

Q. Do you know whether during the meeting attention was called to him by the speeches of any one of the speakers? A. I remember this: there was an allusion made to him by nobody, except Mr. Hodnett, his late colleague in the legislature. Mr. Hodnett had been re-nominated on this occasion, and he made an address to the people accepting the nomination, and in the course of his remarks he held in his hand a report of the auditor and he called attention to the fact that Mr. Stevens, his colleague—a representative of the the people of the county of Caswell, in addition to the seven dollars a day (which he put forth with some emphasis)—had received—I forget what amount—a sum out of the public treasury; and then, said he, my fellow citizens, "What do you "reckon that money was paid to him for?"—I am giving the substance of his remarks and I think I can almost repeat what he said—"What do you suppose that money was paid to him "for? It was for acting the spy upon you, the man whom you "have honored with your confidence by electing him to the "senate—he has received this money as his reward as a spy "upon you in addition to his pay as your representative."

Q. Was Stevens there at the time? A. My impression is he was. I cannot be mistaken—I think he occupied his position.

Q. Was attention directed to him? A. I noticed one or two persons turn their eyes upon him—yes, more than one or two—

just as Mr. Hodnett said that; and I also remember, which I should not have done had it not been unusual and provoked a smile, that somebody groaned. That was the only demonstration I remember. I noticed that the eyes of the audience turned pretty generally toward him.

Q. Was there any indignation or anger manifested by the audience? A. No, sir, none but what I have stated.

Q. Was there any indignation or anger manifested by anything they said or did? A. The only demonstration was the turning of the eyes of the assembly generally to him and somebody groaned.

Q. At what period of the meeting mas that? A. That must have been very late in the afternoon. In the first place, we met in the forenoon and it became necessary to appoint a committee and then to have the action of that committee before any thing further was done and we adjourned until after dinner. Then we came in again and there were three speeches made before Mr. Hodnett spoke. We came in about 2 o'clock, after dinner and the report of the committee was read. I made a speech myself and then others spoke. I do not know what time it was when Mr. Hodnett spoke but it was pretty late.

Q. Not long before the meeting broke up? A. Not very long I take it.

Q. You did not see how soon after that Stevens left? A. I did not.

Q. Did you see anybody go up to him and speak to him as he went out? A. I did not, because I did not see him as he went out.

Q. Did you see him any more after that time? A. I did not.

Q. Do you know whether he was missing soon after the meeting broke up? A. The first I heard of his being missing was after night.

Q. Were persons searching and enquiring after him in the neighborhood of the court house? A. All I know is that about 8 o'clock that night at home——.

Q. That would be the month of May. A. Yes, sir.

Q. It would be dark? A. A little after dark. It was after supper, between eight and nine o'clock.

Q. The sun sets about seven in that month? A. After dark I was sitting with my wife on the front portico when Doctor Roan came to me and hallooed, accompanied by a gentleman, now here, Mr. Stevens' brother——

Q. What was the first you had heard about it? A. That was the first I heard of it.

Q. How long after he was found the next morning did you know of it? A. I rose early usually at home unless kept up the night before by some engagement. I believe I rose that morning as usual and one of my servants came and told me that Mr. Stevens was found dead. That was the first I heard of it.

Q. Was there a large crowd of persons around the court house the day he disappeared and up to the night of that day? A. There was a public meeting and it was pretty late before the people dispersed.

Q. Were persons passing around all over the premises while the meeting was in progress? A. Yes, sir.

Q. And it progressed until nearly night? A. Until a late hour in the afternoon.

Q. The court house square is in the centre of the town? A. Yes, sir.

Q. There are houses all around it? A. Yes, sir, houses surrounding it on all sides.

Q. Did you see Stevens' body? A. Yes, sir.

Q. Before it was disturbed? A. I did not see it until it had been removed.

Q. The body had been removed from the position in which it was found? A. It was in the room. It was found on a pile of wood. When I saw it it was laid out.

Q. Was the rope around his neck? A. No, sir, there was no rope when I saw it. I did not go into the room while the jury was there.

Q. Did Stevens live in that town? A. Yes, sir.

Q. How near the court house? A. I suppose—I do not know—about 350 yards from the court house.

Q. [By Mr. Manager Sparrow.] How many squares? A. You can't estimate it that way, the place is not laid out in squares, but he lived perhaps four or five hundred yards from the court house.

Q. Was he a candidate at that time for any public office? A. I do not know.

Q. It was not understood then whether he was or not? A. I did not understand it.

Q. Did he hold a public office at that time? A. He was a justice of the peace.

Q. Was he a member of the legislature? A. Yes, sir, he was a senator, he had been a senator from Caswell county in the legislature.

Q. Has any one been punished for the homicide? A. Yes, sir, it seems to me that a good many of us have ——

Q. No one has been punished for committing the crime? A. There has been no trial of any individual. No person has been specifically charged and indicted for the crime that I know of.

Q. Do you know of any other cases of homicide in that county that have not been punished within the last twelve or eighteen months? A. I do not.

Q. You know of no person who has been scourged or whipped? A. I know of no such instances, unless you desire to know what I have heard.

Q. You state that Kirk always treated you personally with proper courtesy? A. He did.

Q. Except as you were included in the general denunciation? A. Yes, sir.

Q. What was his personal conduct towards the prisoners generally—I don't speak of those cases where he was angry? A. Towards me it was respectful.

Q. Was it not so towards the others? A. I have no observation particularly to make in that regard.

Q. I speak outside of these cases when he was in a passion? A. So far as my observation went, when he came into our presence he was respectful to them as well as myself.

Q. You were allowed to go on parole? A. Yes, sir.

Q. When he stated to you that he was giving you privileges beyond his orders he referred to allowing you to go on parole? A. I did not understand him to mean that exclusively.

Q. Wasn't that what he said, that allowing you to go on parole was in disobedience to his orders? A. He said repeatedly that he was giving me privileges in contravertion of his orders—that he was giving me indulgence that his orders would not justify.

Q. Was not that what he referred to, allowing you to go on parole was in disobedience of his order? A. I did not so understand it. I understood him to say that the granting of parole was contrary to orders; and, as I understood him, his general courtesy and bearing was contrary to orders—not contrary to orders—his language was that it "exceeded his orders."

Q. You do not mean to say that he said that his personally gentlemanly conduct to you was against his orders? A. As to his personally gentlemanly conduct to me, I understood him to say that these courtesies that we had received at his hands were beyond what his orders justified, in other words, the sum and substance of his remark was that in the strict discharge of his duty he would have been much more rigid than he was. That is what I understood him to mean.

Q. Do I understand you to say that when he spoke about being attacked and said if he was attacked he would burn the houses and destroy the women and children, he would do that by the orders of any one? A. I have revolved that over and over again. I dislike exceedingly to say that unless I am sure. It is my impression that he said he was acting under orders to do that. I have canvassed that matter a good deal, and my own impression is the same as that of all the other gentlemen. If I had not have been supported by their recollection I should doubt my own conclusions.

Q. Let me call your attention to a circumstance. He predicated that statement, you say, upon the idea that an attack was about to be made. How could he have had any orders to that effect, when he had but a little while before got notice that there would be an attempt to rescue you and attack his men? A. The remark was, if there was any attempt to rescue.

Q. It was a general order? A. Yes, sir, that upon any attempt to rescue he would destroy the women and children, burn the town and put the prisoners to death.

Q. But he was not in the town all the time, he was in the country a portion. The orders you speak of were confined to his conduct when in town? A. I am simply giving you what he said—his language.

Mr. MERRIMON. I insist that the counsel shall not argue the matter with the witness.

Q. Do you know any combinations in the county of Caswell to put down wages? A. Oh, no, sir. I desire to make one remark about that declaration of Kirk's. His manner is perfect in my memory and I will state how he explained himself as I remember it at the time he spoke of burning the town. He said with considerable anger that "If any attempt "was made to rescue, his orders"—he put that word in—"were "to shoot down the prisoners." Then he went on in the same connection to say "And I will burn the town down and de-"stroy the women and children."

Q. He did not say this other part was his orders? A. The utterance was all in the same connection.

Q. I understood you to say that he made the declaration, a moment afterward, that if you would all be quiet you should be protected even if you were attacked? A. Yes, sir, if we would obey his orders.

Q. Immediately after making this other statement? A. Yes, sir, in the same connection.

Q. You say you know of no combination to put down the price of labor? A. Certainly not.

Q. Do you know whether there were any of Stevens' family

sent before the grand jury by the solicitor at the time he made the declaration? A. I don't know whom he sent.

Q. Did he send any witness at all? A. I don't know.

Q. You do not know whether any of the family of Stevens were before the grand jury or not? A. I do not.

Q. How many are there in the family of Stevens? A. He left a wife and two children.

Q. How old are his children? A. There is a little girl, I suppose, of eight years, and the other is an infant at the breast.

Q. Is there any other member of his family? A. He has a brother Henry there. I don't know whether he lives with his other brother or not.

Q. Stevens had two brothers? A. Yes, sir.

Q. They live in that town? A. His brother Thomas lives next door neighbor to Stevens' family. Henry is an unmarried man and I don't know whether he lives with his brother's widow or with Thomas.

Q. You stated in some part of your testimony that it was said you were arrested by the authority of the United States? A. This man Yates told me that when he arrested me.

Q. By the authority of the president of the United States and the governor? A. I asked him by what authority I was arrested and he said "by authority of President Grant and "Governor Holden."

Q. Were there United States troops there at the time? A. Yes, sir, I think so.

Q. As well as these state soldiers? A. Yes, sir.

Re-Cross Examination.

By Mr. MERRIMON.

Q. State if, at any time, John W. Stevens was a client of yours? A. He was repeatedly, and was at the time of his death. I was engaged with Mr. Hill as his counsel.

Q. State if you know anything about the death of his mother?

A. I know nothing except common report.

Mr. SMITH. That certainly is new matter.

Mr. MERRIMON. We propose to show that Stevens,

mother was found with her throat cut in his house only a short time before.

The WITNESS. Doctor Yancey the coroner is here, who can clearly state the facts in reference to that. I know nothing about that, except mere rumor.

Senator LATHAM offered the following order:

Ordered, That the order that this court adjourn each day at one and a half o'clock, p. m. to three o'clock, p. m., and remain in session until five o'clock, p. m. be rescinded, and that the sitting of the court be as it was before the adoption of said order.

The CHIEF JUSTICE put the question on the adoption of the order of Senator Latham and it was decided in the affirmative.

WILLIAM B. BOWE, *a witness called on behalf of the Managers, being duly sworn, testified as follows:*

By Mr. MERRIMON.

Q. State your name, age, place of residence and business? A. My name is William B. Bowe, I live in the county of Caswell near the county seat. My age is 63 last Wednesday, and my occupation is that of a farmer.

Q. State whether, at any time during the year 1870, you saw any armed men in the county of Caswell, and if so state under what circumstances—whether they did anything to you, and if so, what? A. On the 18th July, the candidates of the republican and democratic parties for congress had an appointment to speak in Yanceyville. The day was proclaimed and there was a large meeting of the citizens to hear what the candidates had to say. I went to that meeting.

Q. Where did it assemble? A. At the Yanceyville court house. I went down there, and went in and took my seat at a convenient place to hear. I did not know when Kirk's soldiers entered the town, I knew nothing in the world of their entry. The first thing I knew of their being there was a little before I was arrested. I did not know they were arresting

anybody, and I learned afterwards that I was the last person that they did arrest on that occasion.

Q. You mean you were the last person arrested that day? A. Yes, sir, they had made the other arrests. Col. Kirk, as I afterwards learned him to be—I did not know him then—with two or three officers came right up before me and asked me what my name was.

Q. Where were you then? A. I was sitting in front of the speaker.

Q. In the court house? A. Yes, sir, as if the speaker was here, and I was sitting there, [indicating.] He came up between me and the speakers, and I thought in a very abrupt manner, and asked me my name.

Q. Was speaking going on then? A. Yes, sir. I told him my name. He said, "You are my prisoner; get up and follow me," and he spoke very abruptly. I asked him by what authority he arrested me, and he pointed around, I suppose to his soldiers. I said I would like to see his warrant, and would like to know by what authority I was arrested. Then he commanded his soldiers to carry me off. There seemed to be just as many hold of me as could get hold, some pulling one way and some the other, and I had to throw them off to get relief, and they became very much enraged. I was surrounded by soldiers and officers, altogether some eight or ten of them with muskets and bayonets right at me. I heard the bursting of a cap or two, and several pistols were presented at me, some one way and some another.

Q. What was said? A. I don't know what was said, but they were cursing and swearing at the top of their voice, and it seemed to me that every one in the house was swearing and some were crying out, "Shoot the "d—d old Kuklux." In a very short time—a minute or half minute—they started with me down stairs. I told them to let me go, that I was not going to offer any resistance. Before we started they said I must give up my weapon. I told them that I had none, and then they searched me to find it. They started down stairs, and just

as many as could get around, holding me. Before I had started, in throwing some of them off, I had torn the coat of one half off, and that put him into fighting me on that account. He said I had torn off his coat and he fought me all the way down stairs. I told the officer either to let me go, and give me a chance at him, or else to keep him off; they would not do that, and they kept on with me until we got to a room in which they had the other prisoners. They thrust me into that room at the point of half a dozen muskets. They swore they would kill me any how. Some said "Kill him, shoot him." There were windows around, and there were a parcel pointing their guns, and they were cursing at the very top of their voice. It seemed to me as if every man on the ground was hallooing. They commanded me to sit down. I sat down, and after I had taken my chair there was some half a dozen at the door swearing they would shoot me, and they got there with their guns pointing from that direction cocked. I just sat there. Some of my friends advised me to move around where I would be out of their sight, and I did so. I sat there in that room till towards night when on application made by some of the prisoners, we were removed from the basement of the court house up into the court room, which was a very large room, as large as the house of representatives, I suppose. From that time, for three weeks there was a little coolness between me and Colonel Kirk, and the balance of them [laughter] I said nothing to them, and they said nothing to me. At the end of about three weeks, Colonel Kirk summoned the county commissioners together to transact some little business. I was one of the number. It happened on Saturday evening. After we got through with the business, Colonel Kirk remarked to Dr. Roan, who was one of the commissioners, and to Mr. Jones, who was another, that they might have a parole to go home that evening.

Q. They were prisoners also? A. Yes, sir.

Q. They were county commissioners with yourself? A. Yes, sir. After we got through doing the business he remarked to them that they might have the privilege of going home that

evening. He then said to me, "You have asked no favors—it "seems to me you don't want any." I replied to him that I didn't feel myself under any obligations, that I hadn't offended against the laws, that I had done nothing to be arrested for, and I was not dependent upon him for my rations, or anything else, that I drew them from home, and I was under no obligations whatever, and should ask of him no favors. He stopped a moment and said, "You may go home, and stay until to-morrow evening." I asked him whether I could go home without being guarded by soldiers, as I had been accustomed to see from one to three soldiers sent out with every person paroled and suffered to go home. I asked him if I could be permitted to go without these guards, and said that I would never go home at the point of the bayonet. He told me I might go home, and from that time Colonel Kirk treated me very respectfully. He never denied me anything—I didn't ask him for much it is true—but I never asked him anything but what he granted. That was the 3rd. I stayed there nearly another week, and he paroled me two or three times to go home. I lived about a mile from the court house. We stayed there until we were ordered to the Shops. We were ordered there one Saturday evening. They were all preparing to go, prisoners, soldiers, and all. I went to Colonel Kirk, and asked him the privilege of going to the Shops in my own way, and in my own time, and I would report myself there at any hour on Monday morning. On the next morning, the Sabbath, I, with some other prisoners, prepared and went over to the Shops and reported to him on Monday morning. We stayed there at the Shops until Tuesday I think some time in the day when we were ordered down to Graham. He still paroled me, and several of us, Dr. Roan, Judge Kerr, Mr. Neill and two or three others, and permitted us to stay at the hotel and report to him once a day at a given hour. We stayed there until we were ordered down here.

Q. What was done with you when you were brought to Raleigh? A. Soon after we got here to the Hutchin's house ——

Q. State what was done to you by the judge or any person who claimed to have authority over you? A. When we got to the depot down here we were met by an officer.

Q. What I want to know is were you taken before the judge and discharged?

Q. [By the Chief Justice.] After you came? A. They never brought me before a judge at all.

Q. Were you discharged? A. I was discharged, and I have the discharge at home.

Q. Was there any charge made against you? A. I was charged with being accessory to the death of Stevens after the fact. I do not know how.

Q. Was there any prooff brought against you? A. No, sir, they discharged me, there being no evidence against me.

Q. Do you know whether any persons was arrested here afterwards, and if so, who these persons were? A. I don't remember just now.

Q. Do you know whether Mr. Wylie, Mr. Roan and Mr. Mitchell were arrested? A. Yes, sir, they were arrested—those three.

Q. Who made the affidavit, do you know? A. I do not know.

Q. We will now go back to Yanceyville. Describe those armed men, what they did, their discipline, or anything you know about their demeanor? A. When they first arrived they came inside the inclosure of the court house. The yard is inclosed by an iron railing. They came inside of the inclosure and pitched their tents there, and continued for some two weeks, and they also occupied the basement of the court house.

Q. What was the demeanor of the officers? A. The demeanor of the officers was exceedingly rude. I am not much acquainted with military life.

Q. Tell us what they did? A. They were cursing and swearing and threatening to arrest everybody, it seems to me.

Q. Did they curse the prisoners, if so, when? A. They cursed the prisoners all the time.

Q. And the officers? A. The officers and men, and frequently the soldiers, would accompany the officers whenever they came about us.

Q. Give us a specimen of their language? A. We were charged with being a "Set of d—d Kuklux cut-throats and "midnight assassins," that was the language, and that "We "didn't deserve any consideration."

Q. What was the appearance of the troops, their discipline &c.? A. Their appearance to me was that of a parcel of boys—mere boys for the most part. There were a few aged persons among them. They seemed to be mere boys raised in the gorges of the mountains, who had never before seen anybody or anything much until they came out here. They seemed to admire our court house above everything. They were on the top of it, and all through it, and they thought it was the finest court house they had ever seen.

Q. What was the tone of their conversation—their demeanor in the court house, and through the town as you observed? A. It was low, vulgar and obscene in their intercourse with one another, and it was always worse when they came in contact with the citizens. They never addressed the citizens without curses and obscenity. They frequently charged that everybody in the county was implicated in the murder of Stevens, and that we were responsible, and ought to be held for it.

Q. State whether you saw any improper behavior about the pump, or anywhere else on the public square? A. They would frequently go out on the public square where the pump was, and undress themselves and wash.

Q. Did you see that? A. I saw it on some occasions; and then they would otherwise expose themselves with a great deal of indecency.

Q. Were persons passing about the street? A. Yes, sir.

Q. Ladies? A. The ladies didn't come out much during that time.

Q. In the presence of the troops? A. No, sir, they didn't go out any where.

Q. How far was this conduct from the houses occupied by people? A. There were some houses within fifty yards.

Q. Which were inhabited by ladies? A. Yes, sir, there were between 50 and 150 yards of a good many houses. The second day after they got there at night, they seemed to have imagined that the whole county——

Mr. SMITH. You need not speak of their imagination.

The WITNESS. I will state what they did. On the second night after they got there, about 10 o'clock at night—I didn't sleep as much as some others—I was walking about the court house a good deal. The dogs began to bark on one side of the town, and soon they commenced barking nearer the town. Presently there came a parcel of persons whom I took to be sentinels, and they reported to Kirk that they would be attacked in a few minutes. Colonel Kirk came up in the court house very much excited, and called the attention of all the prisoners that he had been credibly informed that he was to be attacked by a body of men in a very few minutes, and he said, "In case I am I shall shoot the last one of you, and burn the "town, and destroy the women and children."

Q. That was in the night? A. That was in the night. There was another occasion which brought him out very much in the same sort of way, when he said that he had been informed that they were coming from Danville. He made very much the same remark then.

Q. Did he say anything about his orders?

Mr. BOYDEN: That question is leading.

Q. [By the Chief Justice.] State what he said? A. I distinctly recollect on one occasion that he said he had orders, in case he was resisted in any way, to kill the prisoners.

Q. State anything that transpired on the day of the election? A. On the day of the election the troops he had around over the public square, going to and fro.

Q. [By the Chief Justice.] In little squads, or just one or two? A. Sometimes in squads, and sometimes they seemed to be promiscuously mixed up.

Q. Armed? A. All armed. Most of them going about with pistols, and showing them. At 11 or 12 o'clock, we were informed by Colonel Kirk that if we wanted to he would march us to the polls and we could vote, and he did so.

Q. Did any guard attend you? A. Yes, sir, I suppose about 25 or 30 soldiers and officers guarded us filed on each side.

Q. State whether he gave you any order about the election, and if so, what? A. He gave no order that I knew of that day in regard to anything about the election.

Q. I mean about the votes? A. Nothing that I recollect.

Q. I mean about a certificate of the persons who were elected? A. Nothing on that day.

Q. Did he any other day? A. On a subsequent day he called the county commissioners together to make out a certificate of the persons elected, as it was our duty to do under the law. I told him we didn't feel that we had any right to do any official act under the circumstances.

Q. How long was that after the election? A. That was a few days. I don't recollect, but probably three or four days.

Q. The day prescribed by law to prepare the votes? A. We took some action on that day but did not finish, and he called upon us on a subsequent day to finish it. As we told him we had no right to act, he constituted us into a military commission to do it, and so stated.

Q. He appointed you? A. Yes, sir.

Q. By his military authority to do what? A. To revise the vote and count it and make out the returns.

Q. Did you do it? A. Yes, sir.

Q. Did you grant any certificates? A. No, sir, we just made a count and handed it to him.

Q. State whether you have a general acquaintance in the county of Caswell? A. Yes, I have lived in the county 40 years.

Q. I ask you whether you know that Colonel Kirk made any speech there? A. Oh yes, sir.

Q. Under what circumstances—what did he say? A. On

Saturday previous to the election they had a very large meeting of colored men, and there was some three or four addresses made.

Q. By whom? A. There were two or three black persons—I only know one or two of them—a man by the name of George Bowe, who used to belong to myself.

Q. Were there any made by the soldiers and officers? A. After they had made their speeches Major Yates got up and made a long harangue, in which he used the most inflammatory language I ever heard. He told the black people that they had come here to see they had justice done them, and that they hadn't had justice done them heretofore, and they had come here to see justice done, and they intended to stay here until they had accomplished that purpose; that every man had all the rights and immunities of every other man, and they had not been dealt fairly with, &c. Then Kirk got up and told them that they had been oppressed and borne down, and that he had been sent here to relieve them, and he intended to stay until the youngest child became grey but what he would accomplish that object; that he would stay there and stack the bones of the Kuklux as high as the court house but what he would do it. The negroes seemed as if they would run wild. I never saw anything like it, and the effect was visible in their conduct for months afterwards.

Q. How long was this before the election? A. It was on Saturday, and the election was on the following Thursday. The Saturday before the election the league held a meeting. and one of them who lives with me stated——

Mr. BOYDEN. We object to his statement.

Q. State what they did? A. They had a meeting.

Q. [By Mr. Smith.] Were you at that meeting? A. No, sir.

Q. State anything you saw then? A. I saw them on parade.

Q. Where? A. They were parading up and down the street nearly all the time, some times in front of the court house, and then they would be gone again. Late in the evening I saw

them accompanied by a large number of these soldiers and officers and they marched up to near the court house to a grog shop where they were treated every one of them. It seemed to me that there were several hundred who were furnished with drinks. I saw them go in two at the time.

Q. Were any of these soldiers and officers with them? A. Yes, sir, when they came out of the court house some of the officers, I don't know which one, proposed that they file into line and give some one, I didn't understand the name of the individual, three cheers and then they would march in front of the court house and give the prisoners three groans. Just as the negroes got up to the court house I turned off.

Q. Did they give the groans—did you hear them? A. Yes, sir, I heard them groan as I turned off.

Q. Were these soldiers and officers along with them? A. Yes, sir, some of them.

Cross-Examination.

By Mr. Smith.

Q. Were you present at a meeting on the day of the night on which it was supposed Stevens was murdered? A. Yes, sir.

Q. In the court house up stairs? A. Yes, sir.

Q. Was Stevens present? A. I don't think I saw him.

Q. Did you hear the speech of Mr. Hodnett? A. I did.

Q. Do you recollect of his calling attention to Mr. Stevens? A. Yes, sir, I recollect he had a pamphlet or some document. I do not know what it was.

Q. Was not the attention of the whole crowd directed to Stevens by that? A. I think it was, from the fact that when Hodnett called attention to the paper the people looked round towards the door.

Q. Did you yourself at that time see Stevens? A. I did not.

Q. Was there any manifestation of anger or excitement against him by that crowd when that language was used? A No, sir, I cannot say that there was any angry exhibitions.

Q. I don't mean words? A. No, sir; nor any gesture. There were no signs or demonstrations of anger.

Q. Was it not received with some indignation—Hodnett's statement? A. I don't remember to have heard any hissing or groaning.

Q. Could you not see from the manifestations, the countenances and demeanor and manner of the audience? A. I know that the audience was indignant at him by reason of what was charged upon him, but there was no demonstration of violence in any way.

Q. When did you see Stevens next after that meeting? A. I did not see him any more until I was summoned to hold the inquest.

Q. That was the next day? A. Yes sir, Sunday morning.

Q. Was there a crowd there on the ground during the rest of the day? A. Yes, sir, over most of the ground on the east side of the court house fronting the room on which Stevens was murdered; there are some persons living, some black people.

Q. Where were you the next morning? A. I was home when I was summoned on the jury.

Q. Had the body been disturbed when you saw it? A. They said it had not. It was lying in a position in which he seemed to have been murdered.

Q. With a rope around his neck? A. Yes, sir.

Q. Could you tell from the appearance of the rope how it was tied—whether in front or behind? A. There was a noose in the rope, and it seemed to have been thrown over his head and jerked violently.

Q. From behind? A. From behind over the shoulders. It seemed it was never loosened from the time it was drawn.

Q. Did you see any stabs about the body? A. Yes, sir, he was stabbed in two places in the throat, and there was one stab near his heart.

Q. Do you know of any attempted arrangement among the people there—the landowners to fix a higher rate of wages? A. I know of no combination. I can tell of a little occurrence

that did take place at one time. An agent sent down there in behalf of a railroad company to hire hands was paying higher wages than the farmers thought they could pay, and there was a proposition that the farmers should hold a meeting to ascertain whether they could bid with this agent, and determine what they would do.

Q. Did they have such a meeting? A. I don't think they did.

Q. Were you present at any such meeting? A. I was not.

Q. Was there any complaint made to you by any person who claimed to have been injured by the sheriff—to you as magistrate, sheriff or commissioners? A. No, sir.

Q. I mean injured by the sheriff? A. Yes, sir, I understand.

Q. Has there been any complaint made by colored persons asking your interposition as a magistrate against the sheriff? A. No, sir, there never has been.

Q. Have they ever complained of his treatment to them? A. I may have heard one or two ——

Mr. GRAHAM. We object to conversations of this kind.

Mr. SMITH. It has been attempted by the managers to prove a perfect state of good feeling in the relations between the whites and blacks.

Mr. MERRIMON. Our effort has been to prove there was a general state of good feeling between the two races.

Mr. SMITH. But the general facts consist of details.

The CHIEF JUSTICE. That is only a matter of hearsay. The presiding officer thinks it is not competent.

Q. You have said that they were rude boys who constituted this military force? A. Yes.

Q. Were there not some old men too? A. There were a few men who looked as if they might be 60 years old.

Q. There were young men who looked as if they hadn't seen much of the world? A. I speak with regard to the whole crowd.

Q. They came from the mountain country. A. Yes, sir.

Q. Where Judge Merrimon used to live? A. I think they did.

Q. From the gorges of the mountains? A. I said they had the appearance of persons who resided in the gorges of the mountains.

Q. They were searching everywhere about the court house as a curiosity? A. Yes, sir.

Q. You say also that you were allowed to go with others between a file of soldiers and vote? A. Yes, sir.

Q. Were you allowed to vote as you pleased? A. Yes, sir.

Q. Everybody voted as they pleased? A. Yes, sir.

Q. There was no attempt to restrain the right of voting by Kirk or anybody else? A. No, sir.

Mr. GRAHAM. The witness does not know that.

Q. I mean of your knowledge? A. I saw nothing of it at the polls.

Q. You went with the others to vote? A. Yes, sir.

Q. You said that Kirk directed you to prepare returns, and ascertain the vote of the county, and that you declined to do so, being under duress, and that he constituted you a military commission to perform civil duties? A. Yes, sir.

Q. You did then as I understand count the votes? A. Yes, sir.

Q. And ascertained the state of the vote in the county? A. Yes, sir.

Q. Did he attempt at all to induce you to make wrong returns? A. No, sir.

Q. You acted with as much freedom as if you had not been in prison? A. Yes, sir, he gave us the papers to make them out.

Q. How old a man is Col. Kirk? A. I should judge about 30, it may be a little less and it may be a little more.

Q. He said that he would stay there until the youngest child became grey but what he would accomplish what he was sent for? A. Yes, sir.

Q. Was he excited when he said that? A. Yes, sir, I reckon

he was. He was on the rostrum addressing a very excited crowd, and I suppose he was excited himself.

Q. His expression was that he would see justice done? A. Yes, sir, that he would see they had justice done them.

Q. He was in a condition of angry passion when he said that? A. I suppose he was excited but not angry. There was nothing to provoke his anger.

Q. Nothing that you know of? A. He merely got up and addressed this crowd of black people.

Q. When he was not in a state of passion what was his general conduct towards the prisoners? A. When he was free from passion he behaved himself.

Q. With the exception of your arrest he treated you well enough? A. We had nothing to do with each other after the first day for the three weeks.

Q. He treated you respectfully? A. Yes, sir.

Q. Do you know of any person being scourged or whipped in the county of your own knowledge? A. I do not.

Q. You never saw any colored persons whose backs bore marks of whipping? A. No, sir. I have heard of a few cases, but I have never seen but one man that was said to have been whipped, and he denied it, I think.

Mr. SMITH. I suppose his denial would not be competent, being hearsay. [Laughter.]

Q. Do you know of any secret political organization in the county of Caswell? A. No, I do not. I suppose they thought I was too old to go into such things if there is any.

Q. Do you know of people going about disguised. A. I never have seen a man in any sort of disguise.

Q. You speak of soldiers conducting themselves about there. Did you see anything more than this rude conduct, swearing, cursing and walking about—did they commit any violations of law? A. I don't know as they did, but I have heard that——

Q. That is not proper. At the time Kirk made the remark that he would shoot the prisoners, you heard there was a mea-

TH DAY.

ER, February 16th, 1871.

, pursuant to adjournment,
e of the Supreme Court, in

proclamation made in due

he roll of senators, and the
be present:
. Battle, Bellamy, Brogden,
Currie, Dargan, Edwards,
mance, Graham, of Orange,
Ledbetter, Linney, Love,
errimon, Moore, Morehead,
obbins, of Davidson, Rob-
Troy, Waddell, Warren,

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ness called on behalf of the
fied as follows:

and official position if you
G. Yancey. I reside in Cas-
t. My occupation is that of

body of John

sat for two

sage brought to him by some of his soldiers that there was a force coming to attack him? A. Yes, sir.

Q. It was on the spur of the moment that he made that remark? A. It was soon after.

Q. He never undertook to execute any such threat? A. No, sir.

Q. Did he ever offer any violence or indignity to the women and children of the town or citizens? A. I don't know that he did.

Q. Do you know anything about the death of a man named Robin Jacobs? A. I do not. I never knew him.

Q. Did you know a man by that name in the county? A. I did not.

Q. With what political party do you co-operate? A. I hold that I belong to the old Henry Clay whig party. I am co-operating now with what is called the democratic party.

On motion of Senator Robbins, of Rowan, the court adjourned to meet to-morrow at 11 o'clock.

EIGHTEENTH DAY.

SENATE CHAMBER, February 16th, 1871.

The Court met at eleven o'clock, pursuant to adjournment, Hon. R. M. Pearson, Chief Justice of the Supreme Court, in the chair.

The proceedings were opened by proclamation made in due form by the doorkeeper.

The CLERK proceeded to call the roll of senators, and the following gentlemen were found to be present:

Messrs. Adams, Albright, Allen, Battle, Bellamy, Brogden, Brown, Cook, Council, Cowles, Currie, Dargan, Edwards, Flemming, Gilmer, Graham, of Alamance, Graham, of Orange, Hawkins, Jones, King, Latham, Ledbetter, Linney, Love, Mauney, McClammy, McCotter, Merrimon, Moore, Morehead, Murphy, Norment, Olds, Price, Robbins, of Davidson, Robbins, of Rowan, Skinner, Speed, Troy, Waddell, Warren, Whiteside and Worth—43.

Senator TROY moved that the reading of the journal of proceedings of yesterday be dispensed with.

The CHIEF JUSTICE put the question on the motion of Senator Troy and it was decided in the affirmative.

ALBERT G. YANCY, *a witness called on behalf of the Managers, being duly sworn, testified as follows:*

By Mr. GRAHAM.

Q. State your name, residence and official position if you hold any? A. My name is A. G. Yancey. I reside in Caswell county near the county seat. My occupation is that of physician and am coroner of the county.

Q. State whether you held an inquest over the body of John W. Stevens in Caswell county? A. I did.

Q. How long did the inquest sit? A. The jury sat for two

days in succession—Sunday and Monday, and then adjourned over to Thursday. They sat three days altogether.

Q. Do you remember the number of witnesses examined? A. I think thirty-five altogether.

Q. State whether or not counsel appeared for the family of Stevens to prosecute the investigation? A. Yes, sir, Mr. Hill acted as counsel on the first two days. Mr. Ball from Greensboro' appeared with him on the third day.

Q. You prosecuted the investigation until Thursday, same time when the jury rendered a verdict. A. Yes, sir, pretty much all day. We investigated the matter on Thursday until late in the afternoon, when the jury rendered their verdict and we were discharged.

Q. State whether any witnesses were suggested who were not examined? A. No one that I know of. There was one witness that was summoned by Mr. Hill. He took him to his office, and he said subsequently he was unimportant and he sent him home. He said he had examined him in his office, and the man was anxious to go home, and he discharged him and let him go. He was the only witness that was not examined.

Q. How was the jury constituted—of men of different complexion? A. Yes, sir, there was seven white men and five colored men.

Q. Who were the colored men—name them? A. This man John E. Cook; ——

Q. The magistrate? A. Yes, sir, he was one, then there was David Johnson, a man by the name of Stephen Lawson, another one by the name of George Bowe, and another, I think, was Morris Hooper, though I am not positive about the fifth.

Q. State whether or not they were intelligent men? A. I considered them the most intelligent persons I could find. I selected them with that view.

Q. This investigation was gone through and a verdict rendered? A. Yes, sir.

Q. You did not discover who the perpetrators were of the crime? A. No, sir, the jury returned a verdict that Mr. Stevens came to his death from certain wounds inflicted on him and by strangulation by a rope—and that the murder was committed by some persons unknown to the jury. That was about the verdict I think. There was no evidence sufficient to bind over anybody. I told the jury—especially the colored portion of them—that although the jury was dismissed and the court adjourned, yet, if at any time they could find any thing that would implicate any man to let me or the sheriff know of it and we would forthwith have the matter examined into, that at any time, months after if they chose to hold the court in session, I would hold it. They said, and the counsel who was there said, that they were satified that there was no use to investigate further. But I said if they could find any suspicion against any body to let me or the sheriff know and we would have him arrested and brought before the magistrate; that although the court of inquest was adjourned the matter would not stop there but we would still go on, and that if they could find any man against whom there was suspicion we would have an investigation.

Q. Were you present at the public meeting of the people? A. No, sir, I was not present. I was not in the village that day.

Q. State whether or not you were present when Kirk came there and you were arrested? A. Yes, sir, the day of the political meeting there, I was at home, and I got my dinner and went down street to go to the court house. I heard a very great noise up the street and I halted, and in a few minutes these troops came in sight.

Q. What noise was this? A. There was a general hallooing.

Q. On the part of whom? A. These soldiers. I presume they had got in sight when I first heard them. I halted until they came in sight and I saw who they were. We had been expecting them. I went down to the court house and went straight into the court room about the time. I got there a little

after one o'clock; the meeting was organized and speeches were commenced. Mr. Scott I think was speaking, or if he was not he commenced shortly after. I sat pretty close to the speaker's stand. These men about the court house made a great deal of noise. I suppose they were coming on to the lot, but I did not see them. I heard the noise as I was in the court room, but I did not get up.

Q. State whether or not you were arrested, and if so, under what circumstances. A. I was sitting listening to the speeches when this man Burgen came in at first. The first man I saw him arrest was Doctor Roan and he led him out. In a short time he came and touched me on the shoulder and asked me my name. I told him my name. He said I want you to go with me. I said to him in a jocular way I wished he would let me hear the speeches out. He said I could, that I might go back to my seat were I was and report to him. I went back to my seat and while I was sitting there a young man by the name of Henderson came and asked me to go down. He said that his father had been arrested, and he wanted me to interest myself to get his release, that they had arrested him through a mistake, supposing he was his son, James Henderson who was on the jury. I went down and got him off, and then I remained there with the rest of the prisoners. I took my seat in the room where the prisoners were who had been arrested. They were Dr. Roan, Yancy Jones, James Neill, Mr. Kerr, and some others probably. As I went in I remarked they had pretty long faces and I said gentlemen "I have got in good company," and I took my seat and staid there.

Q. You say they had made a mistake in arresting Mr. Henderson on the supposition that he was one of the jurors on the inquest of Stevens? A. Yes, sir, that is, the old gentleman. It was James Henderson.

Q. Did they arrest all the white men on the jury? A. Yes, sir.

Q. And arrested you, the coroner? A. Yes, sir.

Q. And all the white men on the jury? A. Yes, sir.

Q. Did they arrest any of the colored ones? A. No, sir.

Q. You went into the room where these gentlemen were prisoners. State what occurred next? A. I sat down there. Then afterwards we heard a great deal of noise and confusion up in the court room above—we could not tell what. Some one of the prisoners remarked that he believed there was a general fight going on, and in a little time they came in pulling in Mr. Bowe, and cursing, ripping and swearing that they would kill the "d——d old Kuklux s—n of a b—h", and I don't know what all—everything you could think of. I thought they would kill him, and I fully expected to see them shoot him. Somebody spoke to Mr. Bowe—probably Judge Kerr—and told him to keep quiet and he quieted down. Then I spoke to the officers and said, Mr. Bowe is quiet and if you will let him alone this thing will pass over. We remained there till sometime that evening, when some one of the prisoners petitioned the colonel to let us go in the court room. The court room is a large room and much cooler and not so much confined as the place we were in. He consented and we went up into the court room and remained there.

Q. What seemed to be the discipline and order among the troops? A. I looked upon them as a mob, without any discipline at all.

Q. No discipline? A. None in the world—they were a perfect mob; they roamed at pleasure all over the town, bare-footed, bare-headed, cursing and swearing, and were card playing on the sabbath. They paid no more attention to the sabbath than any other day, and the only marks of civilization I saw among them were swearing and card playing all the time.

Q. Was there any obscenity among them? A. All sorts of obscene language and vulgarity.

Q. In conversation or songs? A. In conversation and songs—conversation with themselves and with the prisoners.

Q. They seemed to roam at pleasure? A. Yes, sir, they were prowling about and pilfering. We could see them from the window in men's orchards, gardens and negro houses and

cabins—in fact, wherever they pleased. They did not seem to have any control over them.

Q. Did Kirk give you any reason why you were arrested, or under what authority? A. He never did. At one time, after he became a little more civilized by associating with civilized people, I had a conversation with him. He had paroled me; and I will say that he never maltreated me personally. I said to him, "Colonel, I wish you would discharge me; there is a "good deal of sickness in the neighborhood." I had been paroled and had attended some patients, but I wished him to discharge me altogether. I said to him: "I have no doubt "you have no charge against me, for I don't think there is a "man in the county will bring a charge." "Well," he said, "you are one of the prisoners who were arrested by Governor "Holden's orders and I cannot release you. There are some "who have been arrested without the orders of Governor Hol-"den, on my own responsibility, and them I have the power to "discharge, but you are one of the number who were arrested "by Governor Holden's orders and I cannot discharge you." "Well," said I, "that is all right, obey your superiors."

Q. He said you were one of those whom the governor designated to be arrested, and he could not discharge you? A. Yes, sir.

Q. State whether at any other time there were occasions when Kirk indulged in very abusive language to the prisoners, and if so, state what it was? A. On several occasions he came up in the room and seemed to be in a bad spirit, and he cursed the prisoners in a mass as "d—d Kuklux and assassins."

Q. Assassins? A. "Midnight assassins, murderers," and all that at one time.

Q. Did he apply that language to all of them? A. Yes, the whole mass of them. On one occasion he came up and said that he had reliable information that he was going to be attacked, and if he was he would shoot down every prisoner, and would burn the town and kill or murder—I don't remember the exact language—but the substance was that he would

murder every woman and child. Some person, I think it was Judge Kerr, made some remark to him that we were in his care as prisoners of war, and that as prisoners of war he thought he ought to protect us. He then remarked: "Well, if you "will all obey my orders and stand where I tell you, if I am "attacked, I will protect you as far as I can. But these mountaineers, there is no telling what they will do." He meant, I suppose, that these soldiers could not be controlled.

Q. Was there any more than one scene of that kind? A. On several occasions. I do not remember that he threatened to burn the town and murder the women and children except on that occasion. He came in once in an excited manner and made a personal attack on Mr. Weeden and cursed him as the "D—dest scoundrel in the crowd," and shook his fist at him. Weeden told him that he had done nothing, he said, "D—n you, you have been making Kuklux signs and you are the d—dest scoundrel in the crowd." Weeden did not make any reply that I heard, and finally he walked off and left him.

Q. Do you know anything of Weeden being shot at? A. Yes, sir, I was on parole then. I was not in the court house but I was on the public square sitting on the porch of Col. Williamson's store, I think, looking at the soldiers and prisoners up in the vestibule of the court house. There was a man who sat down on the steps. What was said I could not hear for it was too far, but he deliberately got up and fired his pistol and I saw Weeden jump back after he had fired. Then the soldier walked off into the passage of the court house, and I did not see any more of him.

Q. State whether or not Kirk said anything to you about trying the prisoners by court martial? A. Yes, sir, frequently, on several occasions. He told us at one time the court martial proposed was to be assembled before the election. After a while he told us that it had been postponed until after the election on the 4th. The election was on the 8th, and on the 8th he said it would be certainly held. On two occasions, I

think, he sent his ambulance after the officers of the court and they came back; I asked him where his court was, he said he could not tell—they had not come.

Q. Where did he send the ambulance? A. To the depot I suppose.

Q. He went in the direction of Ruffins depot? A. Yes, sir. he went in that direction and came from that direction, but he said he was disappointed in getting his court, he did not know why. Then he would make another remark on a certain day that they would be there and he did that on various occasions, I do not know how often but two or three times. At one time he said there certainly will be a court martial. I said, "I don't "care, I would just as leave be tried by a court martial so that "I get out of prison as by anybody else, provided they were "gentlemen on it and they will give me a fair trial." He said that we should have a fair trial. I said that is all I can ask.

Q. State whether or not you were present when Mr. Frank Wylie was brought to Yanceyville? A. Yes, sir, I was then up in the vestibule in the court house myself.

Q. What day was that? A. That was the same evening. It was either the 18th or the next day—the day of the political meeting—I think. Late in the evening we were standing there when they came in with him.

Q. Who? A. An officer and a squad of soldiers who brought in Mr. Wylie. They brought him to the door. He seemed to be exhausted and he sat down on the stone steps of the court house. He sat there a very short time—not more than two or three minutes—when this man Burgen rose up behind him with a hickory switch—a short one between a stick and a switch—and told him to get up that no d—d scoundrel should sit in his presence, and he made him get up and stand. They staid there a while and Mr. Wylie remained. I do not know why they kept him there; and then they carried him into the passage. I saw nothing more of him until that night.

Q. Describe how Wylie was dressed at the time? A. He

had nothing on but his pantaloons and shirt. He was in his shirt sleeves.

Q. How far did he live from Yanceyville? A. The nearest way was about ten miles and I think the way usually travelled in a vehicle was about twelve.

Q. State whether or not the party who arrested him came from the direction of his house or some other direction? A. Yes, sir, they came up the street from that direction, when I first discovered them. I did not discover them until they got near the court house.

Q. They were approaching apparently from the direction of Wylie's home? A. Yes, sir.

Q. [By the Chief Justice.] You say that he was dressed in shirt and pantaloons; had he a hat and shoes on? A. Yes, sir, he had a hat and shoes but no vest.

Q. Was he on horse back or foot? A. He was on foot—I don't think he was on horseback.

Q. Did he have anything on in the way of clothing except pantaloons and shirt? A. No, sir.

Q. Was Burgen the party who brought him? A. Yes, sir, I think he was.

Q. He brought him there, and then with a switch struck him, and said that no such d—d rascal should sit in his presence? A. That was the remark.

Q. Mr. Wylie was taken in you say, and then you did not see him until the next morning? A. I saw him that night, it may have been eight o'clock, or it may have been after. Some officer and soldiers—I don't know who the officer was, came up after me to go down and see Mr. Wylie. They said that he was complaining, and wanted me to go and see him. I did so. I went down in the room and I found him a great deal exhausted, and with a very feeble and irregular pulse. He told me how he had been brought, and I supposed that was what had caused it. I told him to take a stimulant and go to bed and the next morning he would feel better. He did so.

Q. What stimulant? A. I told him to take a toddy.

Q. Did you see any marks of whipping or other violence? A. No, sir, I did not examine in regard to that.

Q. Had he or not, up to this time, put on clothes other than those that he came in? A. I think not. My impression is that he was in the same garb that he was in when he arrived, but I am not very positive about that now.

Q. State whether or not you were summoned before the grand jury of Caswell county at the term succeeding the death of Stevens and examined as a witness? A. Yes, sir, the next term. That was the fall term and the only one we have held since.

Q. What questions were put to you and what answers did you make on that occasion? A. I don't remember the particular words or questions they put to me, but they examined me in regard to the murder of Stevens, how he was found, what position he was in, what evidence we had before the jury of inquest and various other questions. I do not remember particularly now about it. I told them all I knew.

Q. State whether you were asked if he had discovered any subsequent testimony?

Mr. SMITH. I do not think the question is in proper form. The witness should be asked what was said and what was done and any suggestions as to the topics as to what is desired to examine him about may be included.

Mr. GRAHAM. I do not desire to go through the whole matter. I simply desire to call the witness' attention to a particular point.

Q. I ask whether anything was said to you about the discovery of evidence subsequent to the inquest? A. Subsequent to the inquest?

Q. Do you know whether the grand jury asked you as to whether there had been any evidence discovered since the inquest? I don't remember particularly about that; they may or may not.

Q. They went through an examination of your connection

with it and you told all you have discovered as having taken place on the inquest on the body of Stevens? A. Yes, sir.

Q. How many murders have occurred in Caswell within a year before the time when Kirk came there with his troops? A. About one year before the murder of Stevens, his mother was found dead in his house and was supposed to have been murdered.

Q. Did you hold an inquest? A. Yes, sir.

Q. How did you find the body? A. I came on the street and I heard that the old lady had been found dead and I askedhow she came to her death. Somebody ——

Q. State what you saw? A. I went down and saw her. I found her lying on the floor with a cut on her neck about three inches long. I put my finger in and found the bone. I made up my mind that she had been murdered, and I went and told the family that they must have an inquest. They made no objection. I summoned a jury and we went down and held an inquest and the verdict of the jury was, that she came to her death by this wound inflicted on her neck, in what way, they did not know.

Q. State whether or not there was an inquest which you held over another party some twelve months before? A. Yes, sir, one other, there was an old lady in the county by the name of Blackwell, who was murdered one night and found the next morning.

Q. Was she a white person? A. Yes, sir. I was sent for and I took the sheriff and went up. We summoned a jury and held an inquest. I found her skull broken in several places and bruises about her person, showing that she had been killed by a club or some instrument of that kind. We could get no evidence. There were two little colored children only on the premises. They lived with her. She was an old woman who lived alone by herself and was supposed to have money. She was a miser and it was generally supposed that she had money. These little children were the only persons who lived with her.

Q. Were there any evidences of robbery or not? A. Yes, sir, her pocket book was found on the floor rifled of its contents. The neighbors did not know anything about how much money she had, but there was nothing in the pocket book.

Q. There was no evidence? A. None, except that of the two little children, who we did not consider competent to be examined. The older one of the children ——

Q. [By the Chief Justice.] How old? A. I don't think more than six years old.

The CHIEF JUSTICE. It is not proper to state what she said.

Q. What else did you find? A. We saw some evidences from the coals of fire about the place that there had been some person about with a torch.

Q. The house was smoked? A. Yes, sir, and they knocked the coals off on the floor. They seemed to have been running about the house.

Q. Was there any discovery ever made from that day to this as to who killed the old lady? A. No, sir.

Q. State whether or not you had any talk with Kirk about pillaging and stealing by his people? A. I had a talk once about them entering people's houses and insulting the females. I said "If they enter my house what shall I do? I have "nobody to protect my family but a little son." He remarked, "tell him to shoot them down." I said that was what I had told him to do. He said "That is right" and he said also, "If "any one of my men insults a female I will have him shot."

Q. How in relation to pillaging and trespassing upon the people. I ask you whether you had any conversation with him on that subject? A. When I spoke about his men insulting females he said "Those are not my men." I told him I had seen them. He said "They are United States soldiers." I said, "No, sir, they are not; they have been here for a long time and "they have never insulted a lady that I have ever heard of, and "besides your men are known from the United States soldiers "by their uniforms being different, and they are not the United

"States troops." He said that they wanted to get up a fuss and had done all this and laid it on his men. I told him I did not think so.

Q. That the United States soldiers have got up this fuss? A. Yes, sir, and laid it on his men.

Q. You spoke of the enclosure to the court house: state if there was any damage done to the court house and the enclosure after these men arrived? A. Yes, sir, they damaged the enclosure a good deal—to what amount I am unable to say. I have heard it variously estimated. I can tell what I have heard estimated.

Mr. BOYDEN. That is not proper.

Q. Make your own estimate if you can? A. I suppose that it would cost eight hundred or a thousand dollars to put the building in the same condition it was before they came.

Q. What was the nature of the damage? A. I was going to state; they took out the pailings and had pathways all through them. Finally they broke up a good many of the pailings and took axes and cut them up to fasten their tents. The court house was greased up and one of the stone sills in the room where Stevens was murdered, was broken up. I suppose they wanted to take a piece of rock as a memento and each one would break off a piece. They greased up the room very much and made drawings on the wall. They had their commissary store there.

Cross-Examination.

By Mr. BOYDEN.

Q. You say you saw the body of Stephens? A. Yes, sir.

Q. Tell us the condition in which you found it and what your opinion was as to his having been killed or not? A. The next morning after Stevens was murdered I was sent for by his brother to my house. I had not got up. The servant man came and waked me up and told me Mr. Stevens had sent for me, stating that his brother was found in the court house with a rope around his neck. I immediately got up and dressed myself and went down stairs, walked around, looked in the

window and saw the body lying on some wood. I put a sentinel at the window and told him to allow no one to hoist the window and get in until I summoned a jury. I went off next and sent for the sheriff and by the time I got a jury summoned the sheriff arrived. We then put a man in the window and he took the catch off from the lock of the door and opened the door and the sheriff, the jury and myself and the physician, Dr. Roan, went in. The body was lying on this wood. The wood was piled up at the north end of the room. It had been used out of the middle and made a sort of valley, and Stevens' feet and body were in this valley except the shoulders and head, which were higher up on the wood. There was a rope around his neck. He was in a rather inclined position, neither sitting nor lying.

Q. What did you find around his neck? A. We found a rope round his neck with the ends behind him as if he had been held backwards; in fact his head was drawn backwards, and the rope was drawn very tightly round his neck, so much so that it was almost buried in the muscles of the neck. There were three stabs on his body—one on each side of the throat or larynx here, [indicating,] and one in the region of the heart.

Q. State whether you saw what appeared to be jets of blood spurted out? A. Yes, sir, there was some blood spurted out on the wood and probably some little on the wall.

Q. As if coming from an artery? A. I suppose it was the last pulsation of the heart that threw it out.

Q. What was your opinion as to whether he was killed there or not? A. I think he was killed there—that is my opinion.

Q. You say you heard of the death of Mrs. Stevens? A. Yes, sir.

Q. And you went and held an inquest on her body? A. Yes, sir.

Q. You told us something about the verdict of the jury. I ask you if you formed any opinion then on the examination of the wound and the circumstances as to how that cut in her neck was produced? A. Yes, sir, I did.

Q. What was it? A. My opinion was that she was murdered by a small ax or hatchet.

Q. That was your opinion? A. Yes, sir, I examined the wound and took out the bone of the neck. I found the wound extended to the bone. I took out the bone and cleansed it and found a crink of the instrument on the bone in the neck. It was the opinion of another physician, however, that the wound might have been caused by her falling on an earthen vessel in the room.

Q. Who was he? A. Doctor Roan.

Q. By falling on an earthen vessel? A. Yes, sir, by falling. She fell from the bed—that is not as the family alleged.

Q. Do you know that she was subject to epileptic fits? A. I do not know it, but I have heard so.

Q. Dr. Roan's opinion was that it was caused by falling on an earthen vessel? A. It was his opinion that it could possibly be made by falling on an earthen vessel from the bed. My opinion was that it was impossible.

Q. Was there a broken vessel there in the room? A. Not in the room but they told me——

Q. Did you see one? A. There was some pieces brought in. When I called for the vessel some pieces were brought in but they were broken into atoms and I could not tell anything about it.

Q. In that conversation and upon that examination, was it proved that she was subject to epileptic fits? A. I think it was proved. I know it was said—

Q. How old was she? A. She was an old lady, I suppose about seventy.

Q. You have spoken of another case of murder where you held an inquest. When did that take place? A. I think it was in 1869.

Q. Did you hear of another murder in the county, of a man by the name of Jacobs—a colored man? A. I heard a rumor.

Q. You did not hold an inquest? A. No, sir, I was never called upon to hold an inquest over him.

Q. When you hear of a murder do you wait 'till called upon before holding an inquest? A. No, sir, if the statement comes from a reliable source I do not wait. I heard nothing about this case till a week after it was done, then I heard it as a rumor. I took pains to enquire. I heard at one time it was at one place and another time another. I got no reliable information about it until about a month afterwards, when I saw Mr. Brock Holden, in whose neighborhood it occurred, and he told me it was so.

Q. You did not think proper to go to that neighborhood after you had heard of it? A. I heard it was in two or three neighborhoods.

Q. Nothing was ever done about it? A. I do not know what the grand jury may have done.

Q. I mean nothing about it by the coroner—nobody was examined? A. No, sir.

Q. Has there been any investigation by a jury? A. Not that I know of, I cannot say what the grand jury may have done.

Q. What was his color said to be? A. He was rumored to be a colored man.

Q. You did not know the man? A. I never saw him.

Q. Were you at a public meeting on the day when Stevens was murdered? A. I was.

Q. Were you up in the court room? A. Yes, sir.

Q. Were you any part of the time or late in the evening in the passage or in any of the rooms? A. No, sir, I was not in the passage or any of the rooms during the day.

Q. I did not know but what you had been in to see this tax gathering? A. No, sir, I had not during that day.

Q. You heard the speeches? A. Yes, sir.

Q. Did not Mr. Hodnett speak of Mr. Stevens in very bitter terms—in very denunciatory terms? A. No, sir, I think not.

Q. Tell what language he used? A. He called the attention of the people in the speech to some money that had been paid to Stevens as a spy, I think he called it. He said some-

thing like this: "Fellow citizens, here is what becomes of "your money. Here is a man who has been paid so much "money"—telling the amount—"as a spy upon your conduct—"to report you," and he turned around, probably, to where Stevens was sitting. I was sitting near the chairman's seat. I had not seen Stevens during the day. I raised up and saw him sitting over in the audience. I think that was about the remark.

Q. You did not consider that harsh? A. No, sir, I did not think it was harsh.

Q. But it attracted the attention of the people to him? A. Yes, sir, when he spoke of Stevens as being a spy and who had received money for such service a good many of the audience looked at him.

Q. He said that he had been receiving seven dollars a day as a member of the legislature and had been receiving this other sum to act as a spy upon the people, and they looked round at him? A. Yes, sir, that was about the substance of it.

Q. Did not Hodnett denounce such conduct as that in pretty strong terms? A. I don't remember that he did. He just repeated that language and let the people draw their own conclusions.

Q. He did not draw any himself? A. I don't know what he did.

Q. He did announce his conclusion? A. I don't think he did.

Q. If he did you have no recollection? A. No, sir, I have no recollection.

Q. What time did Stevens leave the court room? A. I never saw him leave and I did not see him enter.

Q. About what time to your best recollection was it that the attention of the people was directed to him by this speech of Hodnett's? A. I don't remember but I reckon it was in the neighborhood of four o'clock.

Q. How much time did the meeting consume after Hodnett

had finished? A. I am not positive as to that, but I think the meeting lasted until about five o'clock.

Q. It continued until about five o'clock? A. Yes, sir.

Q. You staid until the meeting closed? A. Yes, sir.

Q. Where did you go then? A. I went immediately out of the court room, walked over to the opposite side to the store and took a seat, talked awhile and then went home.

Q. When did you first hear that Stevens was missing? A. I heard it that night.

Q. What time? A. I suppose about eight o'clock, perhaps a little after I had eaten supper. As I usually do, I walked down to the store and as I got to the store I met Mr. McKee, a merchant, and he remarked that Mr. Stevens was missing. I asked him what he meant. He said he could not be found, that his family were looking for him; I said he must be attending some league meeting. He said no, he is not there, and that they were very uneasy about him. He stated that Stevens had promised to be at home a certain hour.

Mr. GRAHAM. All this is hearsay, Mr. Chief Justice.

The WITNESS. Yes, it is what I have heard; I went down to the store and I conversed about it with Judge Kerr and Mr. Neill. At that time there were men about the court house; I could see lights passing about the rooms.

Q. What time was that? A. That was, I suppose, between eight and nine o'clock, and these things continued I don't know how long. I afterwards left and went home.

Q. Do you know of the people keeping guard about that night? A. I heard so.

Q. Do you know of any person white and black who has been whipped in that county? A. I do not.

Q. Did you see any one who had been chastized? A. No, sir.

Q. I mean have you examined these persons? A. No, sir.

Q. What was the state of feeling in the county towards Stevens—was it not very bitter? A. I think people generally disliked him—the white people at least.

Q. I ask if there was not a very bitter feeling against him among the conservative party? A. I think they disliked him about as bad as they could.

Q. Do you know anything about there being any secret political society there known as "The Kuklux Klan," "The Constitutional Union Guard" and "The Invisible Empire?" A. I do not know, sir.

Q. Did you ever see anybody riding about in disguise either in the day or night? A. I never did; I ride as much as anybody, day and night, in the county, the sheriff not excepted, and I never saw anything of the sort.

Q. I understand you to say, in speaking of these troops that were there under Kirk, that you saw but one evidence of civilization among them, one was cursing and the other was card playing? A. I said that they seemed to me to have a remarkable propensity to swear.

Q. But I understand you to say that their swearing and card playing were the only marks of civilization that you discovered? A. I did say that.

Q. Were they badly clad? A. Yes, sir, they were.

Q. Some of them during the warm weather went barefooted and bareheaded and some of them were without shirts, and you complained about their going to houses and insulting people, and you say you asked Kirk if they came into your house what should you do? A. Yes, sir.

Q. And he told you to shoot them down? A. Yes, sir. I asked him what I should do, I had only a little son ten years old to protect my family if one of his men should go in, he told me to tell him to shoot them down, I said that is what I have instructed him to do; he said also that "it one of my men insults a lady I will have him shot," or "I will shoot him," I don't remember which.

Q. According to his account to you he was endeavoring to make them obey orders? A. I don't know about their obeying orders.

Mr. GRAHAM. That is calling for an opinion.

Mr. BOYDEN. The gentlemen have been calling for opinions all the time in his examination of the witness.

Mr. GRAHAM. No, sir, I only called for a statement of what their conduct was.

Mr. BOYDEN. He had been asked by the gentlemen if these men appeared civilized.

Mr. BRAGG. The question has been decided, therefore these remarks are out of place.

Q. To which political organization do you operate with? I operate with the democratic or conservative party.

Re-Direct Examination.

By Mr. GRAHAM.

Q. This old woman, Mrs. Stevens, you say, was found dead. What was the heighth of the bedstead in the room where she was found from the floor? A. I think it lacked a few inches of two feet. I measured it as well as I could with my hand.

Q. The heighth of the bedstead from the floor you think was a little under two feet? A. Yes, sir, about that.

Q. Was the room up stairs or below? A. It was up stairs in the house.

Q. There was a public passage way up stairs—a staircase? A. Yes, sir, a staircase.

Q. I ask you as a physician and an expert whether such a wound as was on this old lady's neck could have been made by the falling into an earthern vessel on the floor? A. I should think not. I can give my reasons for thinking so, if you desire me.

Q. The wound which you saw on the neck was cut down to the bone, and you supposed it to have been made by a hatchet? A. Yes, sir. It was a straight transverse incision across the neck. There was no semi-circle as would be if it had been cut on a round vessel, and there was no ragged or jagged appearance to the wound, but it was a perfectly clean, straight incision, three inches long, transversely across the neck.

Q. In relation to this public discussion, do you know whether the auditor's report contained the statement Mr. Hodnett read

that Stevens had received money as a detective in addition to his pay as a senator? A. I know it contained the report that he had received money, but how much I don't remember.

Q. As a detective? A. Yes, sir, as one of the detective force.

Q. You have ofte ı heard political discussions. Were these remarks any more severe than were usual on such occasions? A. Not a bit more than I have heard gentlemen of different parties indulge in.

Q. You have stated that the people of the county—the conservative portion—disliked Stevens very much. What was the cause of that dislike? A. It was his general course of conduct. He incited the negroes——

Mr. BOYDEN. How can the witness know that? I object.

The WITNESS. There was a general impression that he not only excited the negroes to do mischief, but to burn barns. They believed that he was an instigator of the burning of barns of the county. That is what they believed and that was the cause of the bad feeling towards him.

Q. [By Mr. Chief Justice.] That he was the ring leader of the negroes? A. That was the general impression that he was the ring leader of the barn-burners.

YANCEY JONES, *a witness called on behalf of the Managers, being duly sworn, testified as follows:*

By Mr. GRAHAM.

Q. State your place of residence and occupation? A. I reside at Yanceyville, and am by occupation a farmer at present.

Q. What is your age? A. 50 years old.

Q. Were you one of the persons arrested by Kirk? A. Yes, sir, I was arrested on the 18th July.

Q. In the court house as has been described? A. Yes, sir.

Q. While the public discussion was going on? A. Yes, sir.

Q. How long were you detained? A. I was released here on the 20th August.

Q. Before Judge Brooks? A. Before Judge Brooks.

Q. You were imprisoned from the 18th July to when? A. To the 20th August.

Q. State whether or not you saw this firing at Weeden? A. Yes, sir, I was in front of the court house, and I heard Mr. Weeden remark to a man down below: "You man there, "what are you doing with that pistol? If you do not mind "you will shoot somebody." The man down below said, "Yes, "d—n you, I will shoot you," and he fired away.

Q. The range of the pistol seemed to be in the direction of Weeden? A. Yes, sir, he fired at him, I think. I was standing where I could see him.

Q. State if you were present at any of the scenes when Kirk made threats against the prisoners? A. At one time they brought in a company of men, and placed them in front of us. This took place, as has been described before, and he said that he would kill the prisoners and burn the town, and kill the women and children. He brought in a company of men in front of us.

Q. In front of the prisoners? A. Yes, sir. A good many of us stepped back. I went back to the jury room I recollect.

Q. Kirk said that if there was an attack upon him he would burn the town and murder the women and children? A. Yes, sir.

Q. Do you know who the prisoners in confinement were at Caswell? A. Yes, sir, I have a list of them with me which I took down at the time we were in prison.

Q. Will you produce the paper if you please? (Witness produces the paper.)

Q. Read it. A. (Reading,) John Kerr, S. P. Hill, Dr. M. M. Roan, J. C. Griffith, James M. Neill, Thos. J. Wommack, Barzillai Graves, A. A. Mitchell, James T. Mitchell, Dr. A. G. Yancey, William B. Bowe, Robert L. Roan, Z. Hooper, Yancey Jones, F. A. Wylie, James C. Williamson, Joseph R. Fowler, Peter H. Williamson, D. Rainey, L. H. Gunn, Felix Roan, W. G. Chandler, John B. Blackwell. These were confined in the

court house. There were about a dozen other men arrested, and were under parole, or were kept in the lower room, and had to report daily at different times.

Q. You were carried from there to Company Shops? A. There were about a dozen other men arrested under parole.

Q. Were you carried from there to Company Shops? A. No, sir, I was paroled on the 10th August. I have my parole here.

Q. Read it? A. I have two paroles.

The witness read the two paroles in the words following.

HEADQUARTERS 2D N. C. S. T.
CAMP HOLDEN,
Yanceyville, Aug. 10th, 1870.

Yancy Jones is hereby paroled to visit his home, subject to my orders.

GEO. W. KIRK,
Col. Com'ding Post.

HEADQUARTERS 2ND N. C. S. T.,
CAMP HOLDEN,
Yanceyville, N. C., Aug. 13th, 1870.

Mr. Yancy Jones is hereby paroled, and will report at my headquarters at Company Shops at eight o'clock a. m. 15th this inst, fail not.

By order of

G. W. KIRK,
Col. Com'ding Post.

Q. Were you confined at the court house at Graham at all? A. No, sir, I was on parole until I came here.

Q. You were there while the troops were there? A. Yes, sir, I went to Company Shops and from there I went to Graham, and was brought on here on Saturday, the 20th August, when I was released.

Q. Were you in close confinement there at Graham? A. No, sir.

Q. Were you one of the coroner's jury on the inquest on Stevens? A. Yes, sir.

Q. Dr. Yancey states that all of the white jurors were arrested by Kirk? A. I think he is mistaken as to Mr. Crowder. He was not arrested as I know of. Mr. James A. Henderson was not under arrest whilst there, but he was brought here.

Q. But with the single exception of Mr. Crowder the whole of the jury that served with you were taken prisoners by Kirk? A. Yes, sir.

Q. State whether or not at the last term of the court you were called before the grand jury and examined? A. I was called before the grand jury and was asked to tell anything I knew or had heard since in reference to the murder of Stevens.

Q. They inquired particularly of all the circumstances to ascertain in regard to the murder of Stevens, whether you had heard any evidence since? A. Yes, sir.

Q. And you testified under those circumstances before the grand jury? A. Yes, sir.

Q. When you obtained your discharge was any charge brought against you—any evidence? A. Here is the discharge, (producing the paper.) There was no evidence.

Q. Did you ascertain, in the course of the investigation, whether any crime was imputed to you? A. I noticed that there was a kind of a charge against me here, but they dind't make out a case against me.

Q. Let me see your discharge. (The witness produces the paper, and hands it to the counsel.)

Q. You may read it. (The witness read the paper in the words following:)

STATE OF NORTH CAROLINA,
At Chambers, August 20th, 1870.

State
vs,
Yancey Jones.

The said Yancey Jones being brought before me, and there-

being no evidence adduced against him, it is adjudged by me that he be discharged from custody.

(Signed) R. P. DICK,
Justice of Supreme Court.

A true copy.
Teste W. H. BAGLEY, *Clerk.*

Mr. SMITH. I find on examination that the paper which has been produced as a discharge, is not an original, but a copy.

The WITNESS. It is a discharge that was given to me by Mr. Bagley, the clerk. It was signed by Judge Dick.

Mr. MERRIMON. I suppose there is no question about the discharge have taken place.

Mr. SMITH. It is simply attested as a true copy by the clerk of the court.

Mr. GRAHAM. Do you require further evidence of the authenticity of it.

Mr. SMITH. It is evident that the witness has been discharged, and that is all that is material.

Cross-Examination.

By MR. BOYDEN.

Q. You have said there was some charge made against you?

Mr. GRAHAM. I object to anything that is published in the newspapers.

Q. You don't know of any charge against you? A. No, sir.

Q. Do you know of there having been any warrant? A. No, sir, there was no warrant.

You were brought here under a writ of *habeas corpus* in arrest by Colonel Kirk? A. Yes, sir.

Q. And there was no charge against you that you know of? A. No, sir.

Q. Were you in the public meeting on the day Stevens was killed? A. I was.

Mr. GRAHAM. Will the counsel allow me to ask the witness a question which I omitted.

Mr. BOYDEN. Certainly.

By Mr. Graham.

Q. Do you know of the affidavits in the case of Wylie, Roan and Mitchell? A. I do not know of my own knowledge.

By Mr. Boyden (resuming.)

Q. You were in the meeting? A. Yes, sir.

Q. Did you see Mr. Stevens? A. I saw him in the court house. I saw him on the public square before the meeting.

Q. You saw him in the meeting? A. Yes, sir.

Q. How long did you continue about the meeting? A. Until it broke up.

Q. Did you hear Mr. Hodnett's speech. A. I did hear it.

Q. I ask you if Mr. Hodnett's language was not very bitter and denunciatory of Mr. Stevens? A. He made use of this remark which has been stated here. I don't know that he was bitter. When politicians are making speeches and referring to one another they are apt to be very harsh.

Q. His language was very personal? A. He was very personal when he spoke of Stevens as a spy.

Q. I ask you if it was not very bitter? A. It was the language which you have heard heretofore described.

Q. Can you say that that was all the language he used? A. I do not think I know of any other.

Q. You think they have given all the language? A. I think they have.

Q. I ask you if there was not a very bitter feeling among the conservative party against Mr. Stevens? A. Not so bitter as I have heard represented. That is my opinion. I was well acquainted with Mr. Stevens, and used to talk to him frequently.

Q. I ask if the general feeling was not as Dr. Yancey represented it—as bitter as it could be. A. I don't think it was as bitter as the doctor represented it.

Q. Do you think it was bitter? A. I think there was bitterness.

Q. Do you know what time Mr. Stevens left the court house? A. I do not. I did not see him.

Q. What time was this that Mr. Hodnett directed attention

to Mr. Stevens? A. I cannot say, but I suppose about 4 o'clock.

Q. How much longer did he continue? A. There were three or four speeches made after that.

Q. What time do you think it was? A. I think they adjourned about 5 or half past 5 o'clock.

Q. You didn't leave until they adjourned? A. No, sir.

Q. Were you there about the court yard? A. I was for a short time.

Q. Did you see anything of Mr. Stevens? A. I did not.

Q. When did you first hear that he was missing? A. On Sunday morning.

Q. You did not hear it that night? A. No, sir, I did not.

Q. Do you live in town? A. Yes, sir, but I went up home about an hour by the sun, and I did not go back.

Q. How long do you think you stayed before you went home? A. About an hour.

Q. Then you left about 6 o'clock. A. It was. I left some time before sun down.

Q. How soon the next morning did you hear of his death? A. It was about sun up I heard of it.

Q. Do you know of any secret political organization in the county of Caswell known as the Kuklux Klan, the White Brotherhood, the Constitutional Union Guard or the Invisible Empire? A. I do not.

Q. I ask you if you ever saw any men riding about in the day or night disguised? A. I would like to explain in making my answer. We had a circus at our place and some persons came out in the ring disguised who were called "Kuklux." That is all that I ever saw.

Q. I am not inquiring about that? A. Those are all the persons I have ever seen disguised.

Q. With what political party do you co-operate? A. The democratic party.

Q. Have you heard of any other murders in the county except those named? A. I have not.

Q. Did you know this man Robin Jacobs? A. I did not. I never saw him.

Q. Has there been any proceedings taken in the county of Caswell touching the death of Mr. Stevens? A. Yes, sir, I was on the jury. The matter has been described by Dr. Yancey. I was one of the jury summoned in the case of Stevens.

Q. I mean any indictment preferred. I am not speaking about the jury of inquest? A. I do not know. I was called before the grand jury, but I do not know whether they brought any true bill or not of my own knowledge.

Q. Do you know whether there has been anything done about the death of Robin Jacobs? A. I do not.

Q. How about this old lady that was killed? A. I only know of that by report.

Q. Do you know of any person being whipped? A. I do not. I have seen some said to have been whipped.

Q. Have you seen any marks on them? A. I have not.

Re-Direct Examination.

By Mr. Graham.

Q. I ask you whether you were before the grand jury summoned at the last term to inquire in reference to the death of Stevens? A. Yes, sir, at our last term of the court. We have had but one term of the court since his death, and I was called on to tell what I knew with reference to it.

By Mr. Boyden.

Q. How long did the term last? A. I think it lasted only the first week. I think the judge left before the grand jury could make their return.

Q. Did he leave on Wednesday? A. No, sir, I think it was later. I cannot say now, but I think it was the latter part of the week.

Q. You were asked whether Stevens was not very much disliked by the people. What was the cause of that dislike? A. Shall I tell yon what I have heard there?

Q. No, I want you to state what was the general impression

of the people in regard to him? A. He was reported to have been guilty of stealing chickens——

Q. I don't want any particulars in relation to the odium in which he was held. The inquiry was whether he was very much disliked by the conservative party. State whether there was imputed to him any particular crime? A. Yes, sir, it was the impression that he was the leader, or the cause of this barn burning in our county, and also the cause of burning some of the buildings in the town. We had two buildings burnt in our town.

Q. The impression prevailed that he had encouraged this to be done? A. That was the general impression.

Mr. BOYDEN. I ask whether the rule which has been laid down in reference to taking it for granted that things were done in asking questions, does not apply to this case?

Mr. GRAHAM. I have no objection to put the question which was suggested by the presiding officer when Dr. Yancey was examined.

The CHIEF JUSTICE. Whether he was considered the ringleader of the negroes.

The WITNESS. I think he was considered the ringleader of the republican party.

Q. Of the colored population? A. Yes, sir.

Q. And that he had incited them to commit crimes of that nature? A. Yes, sir.

GEORGE WILLIAMSON, *a witness called on behalf of the Managers, being duly sworn, testified as follows:*

By Mr. MERRIMON.

Q. State your place of residence, occupation and age? A. I reside in Caswell county, am by occupation a farmer and my age is forty-six.

Q. You were not arrested by Kirk? A. No, sir.

Q. State whether or not you went there upon any occasion to serve writs of *habeas corpus*, and had an interview with him. A. I did. I carried some eighteen or nineteen writs.

Q. Issued by the chief justice of the state? A. Yes, sir.

Q, And you went with them to Yanceyville. A. Yes, sir.

Q. Describe what took place there? A. My affidavit is on file. What I have stated in that is true.

Q. That is not evidence here. You will please state what occurred. A. I rode up to Yanceyville in company with a friend from Virginia. There was a great deal of terror in that whole country there and I supposed I might be arrested and if by any possibility I was, I took up this friend with me trom Virginia that he might tell the story of my arrest. We proceeded to Yanceyville. I got off my horse and marched up to the gate in company with this friend. I met a sentinel who drew his musket down in front and asked me what I wanted. I told him I wanted to see Col. Kirk. We were detained there a few minutes when a man came out who was said to be his adjutant. He stated that he was the adjutant and he asked me what I wished. I told him a had a communication for Col. Kirk. He asked me what that communication was. I told him I preferred to state that to Col. Kirk himself. He said he would go and see Col. Kirk and report. We waited there in the hot sun for quite a while, some five or ten minutes, perhaps a little longer, when a man came out to the gate and stood on the inside—I afterwards learned him to be Major Yates—and asked me the nature of the communication I had for Col. Kirk. I told him that they were writs of *habeas corpus* issued by Chief Justice Pearson and I took them out and held them in my hand. He said Colonel Kirk is busy "and can not see you now." I said "Very well, I shall re-"main here until I see the colonel." He then remarked "I "will see Col. Kirk, he is busy now but he may see you in "half an hour." I said "Very well." I then retired in company with my friend and went over to Harrison & McKees' store diagonally across the square some fifty or seventy-five yards and I took my seat there. I had not remained there very long before this Major Yates came and attempted to raise a discussion with me as to some lies which he said "Had

"been told on him, started by that miserable scoundrel Jo. "Turner." I told him that I did not desire to get into any discussion with him, and I went off and left him. Before I I left him after I made use of this remark, that I did not want to have any discussion with him at all, he said "If you are are for fighting we are ready." I said it was the last thing that I thought of, that I was on an errand of peace and I would have no further discussion with him, and I turned and left him. I then retired to Mr. Norfleet's store and sat there a while. I then saw Maj. Yates at the court house gate. He came out. I immediately went with this friend to the gate and said, "Will Col. Kirk see me?" He said, "Col. Kirk refuses "to have an intercourse with any midnight assassin." I observed to him, "I am no midnight assassin, I am a peaceable "citizen in the performance of a duty." I then retired to a tree some fifty yards in front of Mr. Henderson's store. First, I went to Mr. Norfleet's store and sat down there. I saw that there was a good deal of nervousness about some of our citizens and said to this friend of mine, "I may involve some friend, "let us go under that tree and stay by ourselves," and still holding these writs in my hand I went out and sat there a while. Before I left Mr. Norfleet's I saw a man at the upper window. Mr. Norfleet said "That is Col. Kirk." There was a man standing with him in his shirt sleeves whom I afterwards learned to be Mr. Scoot. I started across with the writs in my hand towards the court house. This man that I afterwards learned to be Kirk stepped back. I spoke to this gentleman who was with him and said, "Where is Col. Kirk." He stepped back from the window. In a few moments I saw the same man in the vestibule in the court house and he seemed to be giving instructions to men outside. The drums were beaten. I went up to the gate and failing to see Kirk I went back to the tree. The drums were beaten and a company called out and they seemed to be going through the loading of their muskets and then they marched out of the square across about half way to where I was sitting. They then filed to the left

and halted and remained there a few minutes, and then a company of seven men marched right squarely up to where myself and my friend were sitting, under the command of this Maj. Yates. He said to me, "If you have got homes go to them."

Q. Who said that? A. Maj. Yates. "If you have homes "go to them—I am going to break up this caucusing about "here." My friend who was with me said: "If we will sepa-"rate can't we stay here—there will then be no caucusing?" He said: "I have orders if you do not leave to fire into you." I observed to him: "I am protected by these writs from the "chief justice, and if you choose to fire, fire." My friend then suggested that we had done all that was possible to do, and we then retired in good order. [Laughter.]

Q. That was the result of your mission? A. Yes, sir.

Q. To what place did you retire? A. I retired to Danville, Virginia.

Q. Your mission was ineffective for the purpose for which you were sent? A. Yes, sir.

Q. State to the court whether you had any correspondence with Governor Holden on the subject of a military court to try these gentlemen in prison at Yanceyville.

Mr. McCORKLE. We object to it unless the writing is produced.

Mr. MERRIMON. We have the papers.

Q. Take these papers and see if you had such a correspondence? A. Yes, sir.

Q. Read the correspondence to the court? A. Shall I read a copy of a letter I sent to Gov. Holden?

Q. [By Mr. Boyden.] Is it the copy or the original? A. I sent the copy to Gov. Holden.

Q. [By Mr. Smith.] Do you know that he received it—did he reply to it? A. It was answered by Col. Clarke.

Mr. SMITH. We object to the letter of the witness being read in evidence. No matter which was written first, the letter sent to the governor is the original and the one he retained is the copy.

The CHIEF JUSTICE. The witness having stated that the two papers are identical, the copy that he retained may be read.

The WITNESS read his letter in the words following:

NATIONAL HOTEL,
Corner of Halifax and Edenton Streets,
Immediately North of the Capitol.
RALEIGH, N. C., July 30th, 1870.

His Excellency, W. W. HOLDEN,
Governor of North Carolina:

SIR: Though a citizen of Caswell and styled an insurgent, as an humble citizen I presume to address you, hoping that you may and will answer any respectful enquiry. It is stated publicly that a military court will assemble in Yanceyville, on the 8th August, to try the prisoners held by Col. Kirk.

If this be so the object of this is respectfully to ask, if consistent with your excellency's idea of right and propriety, to so inform me, so that the prisoners may employ such counsel as they wish enough in advance to be available.

Trusting your excellency will receive this in the same spirit in which it is written,

I am, respectfully,
GEO. WILLIAMSON.

His Excellency W. W. Holden, Governor of North Carolina.

P. S. If honored with answer, direct to Danville, Va.

Q. [By Mr. SMITH.] How do you know that the original of that was received by the governor? A. I gave it to Col. Clarke.

Q. That is all you know about it? A. Col. Clarke told me afterwards——

Mr. GRAHAM. You need not state what was told you.

Q. Do you know that it reached Gov. Holden otherwise than that which was said to you by Col. Clarke? A. I cannot say that I do.

Q. [By the Chief Justice.] Is there any reference to the

receipt of it by the governor in the reply? A. Yes, sir, it states that it reached him.

Mr. SMITH. I submit, Mr. Chief Justice, that this is simply a declaration of Clarke's.

Mr. MERRIMON. We have proven already that Col. Clarke was a military officer holding a commission under the governor and that he was one of his agents who communicated with the prisoners and got written confessions from them, and we insist that a letter delivered to Col. Clarke directed to the governor, and a reply from him speaking as having been authorized by the governor to reply, is competent.

The CHIEF JUSTICE. The presiding officer is of the opinion that the paper is admissible.

The witness read the paper in the words following:

RALEIGH, July 31st, 1870.

Col. Geo. Williamson:

DEAR SIR.—I handed your letter to the governor, and he received it most courteously.

He requests me to say to you that the commission will meet on the 8th day of August, and that counsel will be permitted to appear for persons accused.

Very respectfully yours,

WM. J. CLARKE.

Q. State whether you had occasion to visit Yanceyville very frequently during the time the troops were there? A. Yes, sir, my recollection as to dates however is very poor, but I was there frequently.

Q. State whether you were admitted into the presence of the officers? A. I was there between the time I wrote this letter to the governor and the time of the reception of the answer, which I received on the 8th day of August. Endorsed on the envelope are the words "This letter sent by a "gentleman going to Yanceyville who failed to deliver it." It was brought back here and then sent. I received it on the 8th

day of August, the day for which the military commission was appointed; that accounts for its reception so long after it was dated.

Q. Your letter was dated the 30th July, and his answer was dated 31st? A. Yes, sir.

Q. With this superscription accounting for its delay? A. Yes, sir.

Q. State what took place after you went to Yanceyville? A. I went to Yanceyville in the meantime between these two dates. I wrote, I think, on the 5th day of August, asking Col. Kirk permission to see the prisoners. He allowed me to do so after writing one or two letters. I went into his office and he asked me what I wanted to see them for? I told him my object. He got up, buckled on his pistol, and said "walk up."

Q. [By the Chief Justice.] State what you said? A. I told him my object was to see the prisoners. I stated that in the letter, a copy of which I have with me.

Q. [By Mr. Manager Sparrow.] What was the purpose? A. To prepare them for their approaching trial, if it should take place.

Q. You went in with Kirk and what did you say. A. I told him I had written a letter to him asking permission to see the prisoners. He had replied to me in a letter that I could see them at one o'clock. At that hour I called at his office and told him he knew what I came for, but I repeated that I had come to see the prisoners in relation to their trial which was to be had. He carried me up stairs and in walking up he made this remark. "You can stay up here about five or ten minutes, I am in a hurry." We had got half way up the stairs then. I said, "Well, if I cannot stay longer than that to "do the business I have to do I shall not go." I turned around and walked a few steps down stairs and he said, "I will give you half an hour." I said that is as long as I wish. We went up stairs to the court room. The prisoners thronged around me. I told them that I had been to Raleigh, that I had had inter-

views with some of the legal gentlemen, Mr. Merrimon, Gov. Bragg and Mr. Battle, and that those gentlemen thought they would not be able to attend the trial but that I had telegraphed to Gov. Wells of Virginia to know if he would appear as counsel in the trial before the commission, at the same time I assured them that in my opinion no military commission would be held. At this stage Kirk said the military commission will be held on the 8th. Doctor Roan stepped up and said, "Col. Kirk will the military commission be held?" He said "It will be held." Then he said "Will we be allowed counsel and a fair trial." He said "You will." After a little conversation with the prisoners I retired.

Q. Did you have occasion to go back there about the time the prisoners left Yanceyville? A. Yes, sir.

Q. What took place then? A. I was at Yanceyville on the occasion of Mr. Brock Holden's coming up there in company with several prominent farmers in the neighborhood at Prospect Hill. He came to me and said, "I want you to go with "this committee of citizens to see Col. Kirk."

Mr. McCORKLE. We object, Mr. Chief Justice, to proof of this conversation.

Q. Go on and state what transpired with Col. Kirk? A. I went in company with the citizens and when we got into Col. Kirk's quarters he treated us courteously. The object of our interview was explained by Col. Robert Watt. We had had a little meeting and agreed upon certain things we would say to Col. Kirk.

Q. Mr. Watt is a prominent lawyer in Yanceyville? A. Yes, sir, he made a statement to Col. Kirk. I do not know as it is proper to state it.

Q. You can do so. A. He said we had come to see him to make a fair exhibit to him of matters there in our county and to assure him not only for ourselves, but that we thought we could pledge the citizens of the county, that if there were any arrests to be made the civil authorities could do it and we would pledge ourselves that it could be done. He very abruptly said,

"I understand it; we have got you down now and you "have come to beg." I said "Not a bit of it, sir. We "have come to make a plain statement of the condition "of affairs in the county." He said, "Look here, sir, "you have insulted me two or three times. I have got "proof enough to arrest you now." I said "You have no proof against me nor can you have anything against me except what Squire Sam Harrison told you on yesterday." He said "I want you to keep out of my camp." I said "Very well, "if you will designate where your hounds are I will not in-"fringe upon your camp." He said "I have a letter from "Governor Holden giving me control of the public buildings "and grounds." I said "Very well, I will keep away from "them." Every day after that—I will say that his conduct had got my Indian up a little and I felt a little vixenish about it—I would ride up by the edge of the court house and stop by the Presbyterian minister's and leave my horse and go around and take a seat on Johnson's porch and sit there. One day my brother James C. Williamson, who was a prisoner, sent word to me that he wished me to get him some money to come down to Raleigh or to the Shops, that he had none. I sent word to Colonel Kirk by one of the officers that I had been forbidden to go on the square and I had some business of importance to me that I would like to attend to. The officer went off and in a few minutes I saw Major Yates and Lieutenant Banner approach me. They came up to me—I was sitting alone against the post. As they came to me he said "You "have got some business to attend to?" I said "Yes." He said "Colonel Kirk says you can go and attend to any business "you wish to attend to, but you have not got to have thirty or forty men talking." I said "Very well. When I go out if "any of my friends come around I shall certainly talk to them." His reply was "Shut your mouth, you G—d d—d Kuklux." I said "I am no Kuklux, and I expect to talk while I have a tongue." Banner made some little effort as if to draw his pistol, but Yates touched him on his shoulder and said "Let

"the d—d rascal alone," and they started off. They got off some ten or fifteen paces when Banner turned around and said "Shut your G—d d—d mouth," and he rushed back to me—both of them did, and commenced as if they were drawing their pistols. I said "You can shoot me if you want, I am unarmed. "I do not make any resistance." He then cursed me and they went off. I was under the impression then and I am now, that if I had moved my hand I would have been shot down.

Mr. SMITH. That is not proper to state.

Q. Did you finally get the money to your brother? A. Yes, sir, I carried it and delivered it to him at the court house. I sent for him and he came down and I delivered it.

Q. What was the condition of the people in the county in respect to terror by reason of this military occupation? A. There was a perfect state of terrorism.

Q. How was it exhibited? A. I was traveling frequently between Danville and Yanceyville and I saw divers wagons loaded with tobacco, and wagons returning from market and they invariably avoided Yanceyville. I asked these men ——

Mr. BOYDEN. You need not tell what they stated to you.

Q Is Danville the great tobacco market of that county? A. That is the only one except Richmond. Those who pressed the tobacco sent it to Richmond.

Q. Is Yanceyville on the ordinary road to that market town—I mean do a large number of the roads going through the county to Danville pass through Yanceyville? A. The larger portion of the produce south of Yanceyville would naturally go through that place.

Q. You say that the wagoners avoided going through there during the military occupation? A. They would take other roads instead of passing through that place.

Q. How were the women and children in the country and neighborhood of Yanceyville in respect to fear? A. I cannot state that of my own knowledge as to what the feeling was. Those I saw were very much alarmed—most of them. But I did not see a great many.

Q. You know what the general report was, and the general impression? A. The general report was that they were all frightened.

Mr. BOYDEN. We object to that testimony.

Mr. GRAHAM. We submit, Mr. Chief Justice, that the proof of the general report is proper.

The CHIEF JUSTICE. The presiding officer is of the opinion that proof of the general report is competent.

Q. You say that the general report was that there was a state of fright among the women and children? A. Perfect terror, sir.

Q. How many men in that county were confined and separated from their families? A. It will be hard for me to name them over but I have a list here.

Q. [By the Chief Justice.] It is not necessary to name them but give their number? A. I should think fully twenty.

Q. Were they generally very prominent citizens or otherwise? A. Many of them were our most prominent citizens.

Q. Do you know whether the meeting of the association of the Baptist church was held during the time of the military occupation? A. It was not.

Q. Was it appointed to be held and if so do you know the reason why it was not?

Mr. BOYDEN. You will speak of your own knowledge. A. I cannot speak of my own knowledge. I know what I saw in the papers and what I heard sundry members of the church say.

Cross-Examination.

By Mr. BOYDEN.

Q. You have spoken about a letter you wrote to Gov. Holden. Did you have a personal interview with him? A. Not upon that occasion.

Mr. MERRIMON. Will you fix the time.

Q. After the arrest of these persons did you come down with a delegation to see Gov. Holden? A. No, sir, —— Do you mean coming from my town here.

Q. I don't know where they came from, but did you come to Governor Holden to have an interview with a number of persons?

Mr. GRAHAM. I object to the question unless it refers to interviews and occasions that have been heretofore spoken of.

Mr. McCORKLE. We offer the evidence in this point of view. Evidence has been adduced on the part of the managers that great barbarity has been practiced upon these prisoners, and that Gov. Holden sanctioned it. We propose now to prove that during the confinement of these gentlemen the witness now present and others came down to see Gov. Holden, and that Gov. Holden repudiated all acts of cruelty and every act of barbarity that had been practiced. We propose further to prove what reasons he assigned for the arrest of these parties for the purpose of rebutting what the counsel on the other side have introduced to show that he sanctioned all the movements of Kirk in the cruelties they had perpetrated. It strikes us that the proof is entirely pertinent and competent.

Mr. GRAHAM. Let us see when the interview is said to have taken place.

Mr. BOYDEN. I expect that Mr. Williamson can fix the date.

Q. [By the Chief Justice.] Was it before or after the correspondence?

Mr. MERRIMON. I submit that it is not competent in any point of view. If the respondent gave any order it can be introduced; but any conversation which he had with outsiders, and especially after the proceedings which took place on the *habeas corpus*, is inadmissible.

The CHIEF JUSTICE. You had better in the first place fix the time and place of the interview.

The WITNESS. It was on the 26th of August.

Mr. GRAHAM. That was after these men had been discharged on the writs of *habeas corpus* and no thanks to this respondent that they were discharged.

Q. [By the Chief Justice.] Was this after the prisoners

had been discharged? A. After the prisoners had been discharged.

Mr. BOYDEN. We were misinformed, we supposed that it was before.

The CHIEF JUSTICE. The question is clearly incompetent.

Q. Were you at the public meeting on the day before the body of Stevens was found? A. No, sir.

Q. You were not there that day? A. No, sir.

Q. How far do you live from Yanceyville? A. About three and a half miles.

Q. Where were you on that day? A. I scarcely remember. I was with my family just returning from a trip from Texas. I think I was in Greensboro', or on the road from Greensboro' to Danville, looking up my baggage.

Q. Were you in town the morning the body was found? A. No, sir, I started from Danville for home, and knew nothing of the matter. When I got to Yanceyville in the evening the jury was sitting on the body.

Q. I wish to ask you if there was not a very bitter feeling among the conservative party in the county of Caswell against Mr. Stevens? A. There was up to the time I left the county; I left on the 28th of February. What the feeling was afterwards I do not know.

Q. What year? A. 1869.

Q. You have not resided there since? A. I returned the 22d of May, and I have been there ever since.

Q. [By Mr. Bragg.] What year did you return? A. 1870.

Q. So that you were gone a year or more? A. I was not gone a year. I left in February.

Q. [By Mr. Merrimon.] Are you not mistaken in the year you left, you said you left in 1869. Did you mean 1870? A. Yes, sir, I was only gone a few months. I made a mistake as to the year.

Q. You have been there most of the time except a few months since the war? A. Yes, sir.

Q. Do you know anything about any secret political organizations in your county under the name of the "Kuklux Klan," the "Constitutional Union Guard," the "White Brotherhood" or the "Invisible Empire?" A. I do not know.

Q. Have you ever seen any persons disguised in public such as we insist there have been?

Q. Have you seen any colored persons who have been whipped in the county and seen any marks of whipping upon them? A. I have not.

Q. Do you know this colored person Robin Jacobs? A. I never heard of him until I saw the papers.

Q. Were you there at the last term of the court? A. I was.

Q. What day did it open? A. I don't remember. I had no business in the court.

Q. Do you know how long it continued? A. I do not.

Q. Have you any knowledge whether there has been any bills found against any persons for the murder of Stevens or Mrs. Stevens or of Mrs. Blackwell or Robin Jacobs? A. I have no knowledge.

Q. Have any steps been taken to investigate the causes of their death or any bills of indictment been found? A. Not to my knowledge.

JOSIAH TURNER, Junior, *a witness called on behalf of the Managers, being duly sworn, testified as follows:*

By Mr. MERRIMON.

Q. State to the court your name, age, place of residence, and your business? A. My name is Josiah Turner, junior, my profession for near thirty years was the law, but more recently I have been an editor. I spend most of my time in Raleigh, but my family reside in Hillsboro', where I was born and raised.

Q. State to the court whether at any time in the year 1870, you saw any armed men in the county of Orange and if so whether they did anything to you and if so what? A. On the day after the election, the 5th day of August I believe it

was, a number of armed men came from Company Shops to Hillsboro'—among them a couple of negroes. There were some eight or ten white men—ten perhaps, I had been informed ——

Mr. BOYDEN. We object to any hearsay testimony.

Q. State what you did? A. I went to the depot for the purpose of meeting them. I knew they would be there at Hillsboro'. I sent a young man to the train to inform me by raising his hat if these armed men were on the train. The train stopped some two hundred yards from the depot. It was a freight train with a passenger car on it. I was on my horse. When he went to the door he raised his hat which was the signal agreed upon and I waited until the men came out of the cars and then walked my horse off from the depot toward the town. When I had got two or three hundred yards these men came running up with guns cocked. When they were about one hundred and fifty yards they commanded me to halt or they would shoot me. Nearly all of them had their guns presented at me. I turned my horse and rode to them and when they came, lieutenant Hornbeart informed me first I was their prisoner. I called for his authority to arrest me and he said it was by order of Gov. Holden. They then took my arms—I had a pocket pistol—and sent two or three men to my house to search for arms there. My house was about a mile off. These men came back after awhile with three or four guns—two pistols and two guns—I think which they had got from my house. I remained from about eleven o'clock until between two and three as their prisoner at the depot. In the meantime the number was added to by Captain Hancock who was in camp there with a company of soldiers and had been for two or three months or several weeks. He came down with his men and paraded them before the depot. They telegraphed for a special car—at least I heard the order made for one. But the captain said we must wait until the freight car went up. I remained there a prisoner under these men from about eleven o'clock until near three and was then

carried to the Shops and at nine o'clock that night a negro and white man carried me to Yanceyville, stopping on the way about midnight at Doctor Anderson's.

Q. They took you in the night? A. Yes, sir. We traveled until about midnight. The negro complained that he was sleepy and he wanted to lie down under a tree. I protested against that and stated that we would stop at some friends' house. We did so and remained that night at Doctor Anderson's. The next day I was carried to Yanceyville and arrived there amid the shouts of Kirk's men and the negroes, quite a number of whom were assembled. I remained there until about the 13th. I was carried to Yanceyville on the 6th and I remained a prisoner in the court house until Saturday the 13th.

Q. Was anything done to you pending that time? A. The first two or three days I was a prisoner in the room where they said Stevens had been murdered.

Q. Who was with you? A. No one. On Monday night some one came in with a bucket of water and threw it upon my bed. It was a good long room, nearly half the length of this senate chamber. I ran the fellow to the door and I enquired of the man at the door who it was and he said he did not know that he had been asleep. Directly some man came up and cursed the sentinel and told him it was a shame to treat a prisoner in that way. He said "You had better hold "your tongue about it, it was one of the officers who did it." The next night the same thing was repeated, though a less quantity of water was thrown. All the windows were put down and as it was hot weather I asked if the windows could not be raised. He said the orders were to keep them down, and they were kept down close. The next night, when the water was thrown, I ran for the fellow who threw the water, when Kirk came up.

Q. Was that water thrown on you or on the bed? A. On me and on the bed. He came up and he ordered seven men under Captain Franklin into the room. Before that the room

had been guarded by a sentinel at the door and at the windows outside. They kept seven men in the room. Franklin said that his orders were that I was not to speak unless to ask for something to eat and drink. He put a man in each window and he said I was not to go to the windows and that I must confine myself to the back part of the room and I was not to speak to any one without permission. These men remained on the room with me until we were marched from there on the 13th. I frequently saw these men drunk while they were on their posts as sentinels. I saw one with a rock raised at Mr. Hill and I remember some one cursed him and told him to put it down and that it was a cowardly act to throw rocks at a prisoner. I saw other sentinels staggering with guns in their hands and I stated on one or two occasions that they ought to put sober men on guard that these men were two drunk. I saw them frequently pointing their guns, raising rocks, making threats and cursing the prisoners. It was an everyday occurrence.

Q. State whether Kirk said anything and if so what in your presence? A. I had but very little to say or do with Kirk. When I went into the room he came to shake hands with me but I put my hands behind me. He wanted to know what I was arrested for. I said I had come to find out, that I supposed that I would learn from him. He said that he had not heard of it until now and he did not know anything of it—that that was the first of it—my appearance there. Kirk came in occasionally once or twice into the room and I had a little conversation with him.

Q. You were not with the other prisoners? I was below in the court house and the other prisoners were above. He came in twice that I remember. After giving me orders that I was not to talk to anybody, he came in with Marshal Carrow and when he spoke to me I told him that I must get permission from the captain of the guard before I could talk with him. Kirk told me that I had already permission. I told him that that was the orders, that I could not talk to anybody unless I

had permission, and I insisted that Carrow should get permission, and he got it.

How long did you remain there? A. Till Saturday the 13th when we were marched up stairs. There were several hundred soldiers and they designated me as I went up stairs the king of the Kuklux Klan. There was a guard of seven marched with me on my way from Yanceyville. They were all guarded but I was honored with a guard of seven.

Q. Was that a special guard? A. Yes, sir. When we got at Slade springs we stopped and encamped that night.

Q. How did you go along? A. I walked and I rode some in a wagon with Mr. Graves, which Dr. Williamson furnished us with, and I rode a part of the way and walked a part of the way. When we got to this camp one of my guard said he would speak to Kirk and see if I could not be allowed to sleep in the wagon that Dr. Williamson furnished. He came back and said I could not, as Kirk had fixed up a tent for me. I said if I could not occupy the wagon I didn't care to sleep under one of Holden's tents and I declined to occupy it. As we journeyed from Yanceyville I did not see any misbehavior on Kirk's part but I did on the part of his men. I saw a lieutenant draw a sword three or four times on a doctor from Alamance—I forget his name.

Q. Dr. Clendennen? A. Yes, sir, Dr. Clendennen. I saw him draw his sword and draw his pistol and threaten him. He was riding with me and Kirk's men crowded into the wagon so much that it became unpleasant and he ordered them out. They would not go and this fellow drew his sword and his pistol and threatened to shoot him. Then the Doctor appealed to Kirk, and he ordered the men to get out of the wagon, and they all got out except one or two, but they soon came back again, and for an hour or two this quarrelling and cursing continued on the part of the men and Clendennen, who cursed them in return. They drew their swords and pistols on him repeatedly. We got to Graham on Sunday.

Q. State the condition of the weather? A. There was a

terrible rain for hours before we got to Graham. The prisoners stood out for three or four hours. Just about dark they got some tents and they were crowding into the tents from 10 to 14 in each one. I went around and counted and there was as many as 16 in one of them. I having declined to occupy a tent when it was good weather I could not consent to occupy one in rainy weather, and I remained outside. We stayed out that night. Kirk was applied to by the citizens to permit the prisoners to go to the hotel. That was refused. Then he was asked to let us occupy the church, and that was also refused. Monday was still an unpleasant day. It was muddy and wet, but about dark on Monday night orders were given to march to Graham court house. We got there after dark. We went that night in the court house, and a company of Kirk's regiment camped in there with us. We stayed there till Thursday. In the mean time, on Tuesday I think it was, about twelve or one o'clock, Captain Franklin with a squad of men came up to the court house and called for Turner, Gray, Weedon and Wylie, and marched us off to jail. Wylie and myself were put into a dungeon that had been occupied by a crazy man for several months.

By Mr. Smith.

Q. Do you know that fact? A. No, sir, I do not. I did not see him in there, but it was warm in the room and he had just got out. As I got in I could feel that he had been there, and could smell that he had been there.

Q. State what you did see or smell if anything? I was informed that he was in there, and I inferred as much. We were put into this dungeon.

By Mr. Merrimon, [resuming.]

Q. Who? A. Wylie and myself. Weeden and Gray were put into a different cage or dungeon. I heard them, although I didn't see it, ironing Weeden. I heard the clanking of the chains.

Q. What was said? A. I could not hear distinctly what was said. I could only hear the riveting of the chains, but I could

not hear what was said. They were not in a position where I could hear plainly. I wrote a note to Mr. Scott, a merchant, asking him to send me a couple of chairs, a table and pitcher and towels.

Mr. SMITH. We object to the statement?

Q. State what was said.

Mr. GRAHAM. We desire to show that that request was refused by this officer as a part of the atrocity of this conduct, and that the witness was not allowed the decent comforts of life which he offered to pay for himself.

Mr. SMITH. If the application were made in person it would be competent, but the witness states that he wrote a note.

The WITNESS. I made the application to the officer.

Mr. SMITH. We object to any proof of that kind.

The CHIEF JUSTICE. If this note was handed to the officer for the purpose of being sent to Scott, the presiding officer is of the opinion that the fact may be proved.

Mr. SMITH. We object to it unless the note is here.

The WITNESS. I had divers conversations with the officer not only to have the note taken to him, but I told him where to go. When the articles did not come the next day I had a further conversation and asked the officer why the pitcher and chairs were not brought. He said it was against orders and he would not let them come. I remained there in this cell until Wednesday. In the meantime we had got a box of matches from a sergeant or corporal, and we bought some candles, but these matches and candles that we got through the sergeant the officer came and took away; but I happened to have a few of the matches left which I found to be of service in burning a pine brush in the dungeon by way of purifying the air.

Q. Was that a loathsome place or otherwise? A. Exceedingly so. They gave us but two articles of furniture, two blue buckets, one filled with stale water. I wanted these buckets taken out and offered to buy two new ones, but they said these would do. They would not give Wylie and myself any water in place of that stale water that was in one of them, and there

was not even a tin cup, and we had to drink from the bucket, and there was nothing in the room but those two blue buckets. On Wednesday morning the soldiers came in and ordered me to get ready to move to my new quarters, and they carried me out and put me in an iron cage ten steps from the one I was occupying, and kept me there with a negro who had been sentenced to be hung the next day.

By Mr. SMITH.

Q. Do you know that? A. Yes, sir.

Q. Were you present when the judgment was pronounced? A. I was not present.

Q. Do you know it except by hearsay? A. I heard the negro state so myself.

Mr. SMITH. We object to the testimony.

By Mr. GRAHAM. [Resuming.]

Q. What was his name? A. I don't remember his name.

By Mr. MERRIMON. [Resuming.]

Q. Was it Tarpley? A. Yes, sir, that was it. He used to belong to Tarpley.

Q. He put you into a cell with a condemned negro? A. Yes, sir, and I there remained until the next day, Thursday. They would not give me a chair nor a stool to sit on, and they fastened the windows. There was one sash to it with a glass, and the officer took special pains to push that to every time he passed, and he did so repeatedly. I appealed to him to keep it open as the negro was reading his bible, and I told him he ought not to be refused the privilege of reading the bible when he was about to be hung. His reply was that he would soon be—using a blasphemous oath—in a place not to be mentioned, and then close the window again.

Q. What was the condition of that cell? A. It was loathesome and lousy.

Q. How were you accommodated with food while imprisoned in that jail? A. My friends sent me every thing that was good; it was conveyed in general in a plate but it was thrown into a pile to me so that it was not as nice as it would have

been. My friends furnished me every thing I wanted in the way of something to eat.

Q. How long did you remain there? A. I remained there until two or three o'clock of Thursday the 18th, when we were carried before Judge Brooks at Salisbury.

Q. What was done with you there—was any charge preferred against you? A. I have forgotten whether Kirk charged me with attempting to subvert the state government, but I believe Mr. Boyden stated that it was due to me to say when I was discharged, that there was not a particle of evidence against me.

Q. Do you remember any other fact of misconduct, if so, state? A. There were a number of little instances of outrages, and as we went from the Shops over to the court house at Graham the men were cursed and threatened and bayonets put at them.

Q. Did you see army troops? A. Yes, sir, I saw them all, though at a distance.

Q. State anything in regard to their discipline or demeanor? A. There was none among them. I judge that very few could read or write. I know that I wrote a number of letters for them during the first two or three days, amusing myself in that way until Kirk forbade it. They were boys, mostly. I remember asking one from Buncombe how old he was and he said he was fourteen last May or June, and I saw a number who could not have been over sixteen. I suppose there must have been seventy or eighty who were under the muster age. I wrote many letters and even gave them money also, always with permission of the officer of the day. They had no money at the time. They wanted money to buy postage stamps. It was in that way that I learned their ages and ignorance.

Q. What was the state of discipline there? A. I do not suppose it was much better than it would be among Camanche indians and not as good if they were expecting a fight. There were some of them who behaved with some decency, but it was generally blackguarding and cursing. I remember of Captain

Franklin who was my special guard, this circumstance: somebody had stolen a cake of soap and a barlow knife that I used for peeling peaches. I missed the cake of soap. They made very common with my soap and knives and pen and ink, not having any of their own, and when I finished my meals I generally gave them what was left. When I asked for my soap after it was stolen, one of the men said that he believed a man—calling his name which I have forgot, but the sergeant of the regiment—had it. He said he saw him last night playing with it in his hands, and he did not see it after that. Captain Franklin swore that he should not have it. I told him not to trouble himself about the matter but to send a boy and get another one, that I did not want to have the man humiliated if he had taken it. He ran into the next room and came back with the cake of soap. He said that he knew that fellow had taken it.

Q. State whether you were informed by what authority you were arrested? A. I enquired at the time that I was arrested of Hunnicutt by what authority I was arrested and he said it was by order of Governor Holden. As I traveled that night, the man under whose charge I was, said he was very glad I did not resist, that they had orders if I did resist or there was any attempt to rescue me, every man was to fire at me.

Q. [By Mr. Smith.] Who said that? A. He was a sergeant who had me in charge.

Q. State whether you have read the answer of the accused to the article charging him with your arrest? A. Yes, sir, I read it with some care.

Q. Is it true or false?

Mr. SMITH. We object.

A. It is as false as malice could make it.

Mr. SMITH. We object to the question and the answer as improper.

Mr. MERRIMON. We propose to ask the witness whether this answer which he has read is true or false, to put the question in that shape.

Mr. SMITH. We object to that. You might as well put a man on trial and ask if all the averments in the answer are true. The question is leading in its form, it is equivalent to asking the witness in detail in reference to every averment, "Isn't this true?" and "Isn't this?" and so on, in each case putting the words into the witness' mouth. I insist that the proper way of eliciting the proof is to interrogate the witness about the facts, and then it is the province of the court to judge whether his statements are consistent with the allegations in the answer or in conflict with them.

Mr. MERRIMON. My friend concedes, as I understand him, that we may ask the witness paragraph by paragraph whether the statements are true, but he says we cannot ask him one question embracing the whole. I cannot see the force of any such logic.

Mr. SMITH. The gentleman misunderstood me. I did not concede anything of the kind.

Mr. MERRIMON. I insist that we have a right to put the general question, "Is this true or false?" and on cross-examination the respondent has a right to question the witness with a view of shaking the force of his general statements. I think this question is as competent as it would be to put fifty questions to the witness.

Mr. SMITH. I take it for granted, Mr. Chief Justice, that the counsel would have no right to analyze this question, and ask of their own witness whether each particulat part was true. It would be manifestly leading. If then to put that question in reference to the constituent parts is inadmissible, it is still more inadmissible to put the general question embracing all those parts. It is their duty to go on and prove the facts as he knows them to be, and let the court determine whether the facts alleged in the answer are true or false.

The CHIEF JUSTICE. The presiding office is of the opinion that the question cannot be put on the ground that it is too general and embraces in it some negative and some affirmative matter and also matter suggestive of motive. He

has never known an instance where a question has been allowed to be put in that way.

Q. State whether at any time you made any speech or wrote any articles for your paper in the interest of any organization known as "The Kuklux Klan," "The White Brotherhood" or any other secret organization? A. I never did, on the contrary I always denounced them, both the Leagues and the Kuklux Klan, in my speeches and in my paper.

Q. State whether at any time you said anything to the people of the county of Caswell or the people of the county of Alamance for the purpose of exciting them in insurrection or for the purpose of committing crime?

Mr. SMITH. We object to that question, we have a right to know the language that was used and then let the court judge of the tendency of the language.

Mr. MERRIMON. I have put the question in the very terms of the averment made in the answer. How can I put the question in less general terms than are contained in the answer.

Mr. McCORKLE. The effect of the question is to ask the witness' conclusion on a point of law as well as a statement of fact. The witness should be asked what he said in his speeches. I think such a question as is propounded the witness was never seriously insisted upon until to-day. It is competent to ask the witness what he said and did, but it is not competent to ask him a question which is necessarily a question of law and fact both.

Mr. GRAHAM. Then the witness cannot speak at all unless he repeat the speech he made, which might possibly occupy an hour in length. He is charged with speaking and writing articles having a certain tendency, and the question is whether he made such speeches or wrote any such article. I submit that the question is competent.

The CHIEF JUSTICE. The question as far as the presiding officer understands it, calls for a reply to something which has not yet been proved; and he would suggest to the

counsel the better way would be to wait until proof is given that the witness had made certain speeches, and then when that proof is made it will be competent to ask the witness whether he did make such speeches.

Mr. MERRIMON. We will adopt the course suggested by the Chief Justice.

Q. State whether you saw any fire arms of your own in possession of these men who arrested you? A. Yes, sir.

Q Describe them? A. Two guns.

Q. What sort of guns? A. Carbines.

Mr. McCORKLE. In what county do you mean?

Mr. MERRIMON. Orange county, or I don't care where.

The WITNESS. They returned one of my pistols after I had offered a reward of $10 for it.

Q. Where are those guns now? A. I do not know. They are in possession of Kirk, one pistol and two guns.

Q. They have never been returned? A. They have never been returned.

By Mr. SMITH.

Q. You do not know that they are in the possession of Kirk? A. I do.

Q. You mean they were in his possession the last you knew of them? A. I have never got them.

By Mr. MERRIMON [resuming].

Q. State where you left these guns? A. They were in my house. I saw them afterwards at the depot at Hillsboro'.

Q. State where they were in your house? A. They were up stairs in my house in a room where I slept a part of the time. When it was charged in the *Standard* that I was one of the Kuklux, and that I was guilty of the assassination of Stevens, some of which articles I thought had been written ——

Mr. McCORKLE. We object to anything stated in the *Standard* in this connection.

Q. State whether these guns were in your house before you

saw them in possession of these men at the depot? A. They were.

Q. What were these arms used for? A. I had bought them more especially for my protection from the leagues——

Q. Had your house been fired into? A. Not when I was present, but it was fired into.

Q. Did you see any marks of where it had been fired into? A. Yes, sir.

Q. Pistol shots? A. Gun shots.

Q. Where? A. In the pantry. They had shot through the window where my wife was standing close by.

Q. [By Mr. Smith.] You do not know that—do you? A. No, sir, I only saw the marks of the gun shot in the house.

Q. Could you infer the direction from which the balls came from anything you saw there? A. Yes, from a broken window on the west side of the house, and from the marks of the ball I could see that the pistol had been fired through the west window.

Q. From the outside? A. Yes, sir.

Q. State whether at any other place or any time any violence was attempted upon you, and if so, under what circumstances?

Mr. SMITH. What do you refer to?

Mr. MERRIMON. I refer to the time that he was fired at in his office, and desire to show that he kept arms by reason of these acts of violence.

Mr. SMITH. There is no question but what a man has a right to keep arms.

The CHIEF JUSTICE. How long before was this?

Mr. GRAHAM. A short time before, I cannot state exactly.

The CHIEF JUSTICE. I think the question is admissible.

The WITNESS. I had these arms because armed negroes had been lying around my premises.

The CHIEF JUSTICE. You must only speak of what you know.

Q. [By Mr. Smith.] Do you know that yourself? A. I did not see them. The deputy sheriff pursued them——

Mr. SMITH. We object unless the witness knows. We submit that it being shown that he had these arms in consequence of information he had received for protection to his family that is reason enough.

The CHIEF JUSTICE. He can state that he purchased them in consequence of apprehensions he was under from what he had heard.

The WITNESS. I was told by the deputy sheriff and others that ——

Mr. SMITH. You must not state what you were told.

Q. [By the Chief Justice.] In consequence of what you heard did you think it was necessary to have these arms for your protection? A. Yes, sir. I did think it necessary.

Q. Then I understand you to say that in consequence of what you had heard you deemed it necessary to have these arms for the defence of your family? A. Yes, sir.

Q. Were you at any time fired upon, and if so, where? A Yes, sir, in the city of Raleigh at my office.

Q. What time and under what circumstances? A. After midnight through the window of my office.

Q. What were you doing? A. I was writing at the table, and a ball was shot through the window and struck the bed before it got to me. It was fired within ten steps of me.

Q. When was that? A. I don't remember the day, but it has been 12 months or more.

Q. Before you were arrested? A. Before I was arrested.

Q. What was the condition of the window when the shot was fired? A. It was closed.

Q. How closed? A. It is a lattice window, and the window was down and the blind closed.

Q. This ball passed through that? A. Yes, sir, through the glass and through the shutter.

Cross-Examination.

By Mr. SMITH.

Q. What are your personal feelings towards the accused—are they friendly? A. I suppose as good as they ever were.

Q. That is not exactly answering my question—what are they now? A. They are are just as they ought to be between a good and a bad man.

The RESPONDENT. Mr. Chief Justice, I will not submit to this language. I am not going to be insulted here.

Senator EDWARDS. Mr. Chief Justice, I rise to a question of order, the respondent can only be heard through his counsel.

The CHIEF JUSTICE. The witness is informed by the presiding officer that he can answer the questions directly, but not in the way in which he did.

Q. My inquiry is as to your personal feelings towards the accused now and also what they have been for a good while?

The CHIEF JUSTICE. Are you on good or bad terms with him? A. There are no terms between us. I have never passed a dozen words with him in my life. I never had any social relations with him. I never passed a dozen words with him in my life—hardly a good morning.

Q. What I desire to know is, whether you have kind or unkind feelings towards him—not whether you have grounds for your feelings, but what in fact are your feelings? A. I have stated my feelings, my feelings are just those which a good man would have for a bad man.

The RESPONDENT here rose.

Senator EDWARDS. I rise to a question of order. The respondent must be made to behave himself in this court.

The RESPONDENT. I suppose I may be permitted to retire from the court; I do not mean to stay to be insulted.

Senator EDWARDS. Certainly.

The CHIEF JUSTICE. The witness will answer the questions directly as to his state of feeling.

The WITNESS. What is the question?

Q. My question is what are your personal feelings towards the accused—whether friendly or unfriendly? A. I never had any friendly feeling or unfriendly feelings with reference to him in my life. I never had any association or intercourse with him. I have scarcely ever spoken to him.

Mr. SMITH. That is not an answer.

The CHIEF JUSTICE. The counsel will reduce his question to writing.

Mr. SMITH. I will read the question

Q. What are you personal feelings towards the accused, are they kind or unkind? A. I do not know, Mr. Chief Justice, that I can better explain my feelings than to state what has occurred between us.

The CHIEF JUSTICE. We don't want any explanation, but you will answer the question.

The WITNESS. There never was any social feeling between us. There was that feeling which exists between two persons who have carried on a bitter political contest.

Senator JONES. Mr. Chief Justice I submit that it is hardly fair in questioning the witness to force him to use certain words in answering the question. He may not be able to state whether his feeling are kind or unkind.

The CHIEF JUSTICE. The witness may use any equivalent words friendly or unfriendly. The question has not been directly answered.

The WITNESS. The feeling that has existed between us is just exactly that which exists between men who have been engaged in personal and political abuse of each other.

Q. (By the Chief Justice.) Then the feeling is not kind? A. I should not suppose it was. (Laughter.)

Q. Then I understand you to say your feelings are not kind? A. I think about as well of him as I do of any men in his political party, there is very little difference between them. (Laughter.)

Q. Then your feelings have been very bitter against him? A. Well, yes.

Q. And they have been so for several years? A. Yes, for twenty years I reckon.

Q. Are you editor of the *Sentinel*? A. Yes, sir.

Q. Did you not denounce the respondent in your paper from time to time in very strong personal language? A. I have, sir, and very justly, and in reply to his denunciations of me.

Q. I am not asking about who was right and who was wrong. I would like to call your attention to this article. Was it written and published by you? (producing a copy of the *Sentinel* of August 3 to the witness.) A. Yes, sir, I sent this article from Hillsboro' after my family had been fired upon by a number of armed negroes about my premises. I should like to state further in regard to it that the editorial which appeared in the *Standard* ——

Mr. McCORKLE. We object.

The WITNESS. Written by the governor, threatening to hang me in the jail yard.

Mr. GRAHAM. I submit, Mr. Chief Justice, that the testimony is proper as going to show the motive or motives of the witness in writing the article.

The CHIEF JUSTICE. You can prove that in consequence of an article he wrote the one which his attention has been called to here.

The WITNESS. I wrote this article from Hillsboro'. An article had appeared in the *Standard* charging me with being one of the Kuklux, and threatening to have me hanged in the jail yard here.

The CHIEF JUSTICE. The witness will be in order.

The WITNESS. I do not propose to be out of order.

The CHIEF JESTICE. You cannot give the contents of the article published in the *Standard*, because that is attempting to prove facts by what lawyers call secondary evidence. You may state that it was in consequence of an article in the *Standard* that you wrote this article, if that is a fact. Then you can produce the article which was published in the *Standard* if you desire.

The WITNESS. Well it was in consequence of an article written in the *Standard* and in consequence of a telegram that the governor sent to me at Hillsboro'.

Q. Do you know anything about his having sent you a telegram? A. I received it and answered it.

Q. A telegram from the governor? A. The governor's

secretary. This was in reply to a telegram sent by the governor's secretary to me.

The CHIEF JUSTICE. Have you got that telegraam? A. I suppose it is at my house—I don't know whether I destroyed it or not.

Mr. BOYDEN. We object to any proof of the telegram.

Q. That was what caused you to write this article? A. No, sir, that is not all.

Mr. MERRIMON. We insist, Mr. Chief Justice, that when they are trying to show a prejudice on the part of the witness against the respondent, it is his right to state the motive or motives which induced him to write the articles. I would like to know what is the object of producing the articles. I cannot see that they are germane to any matter before the court.

The CHIEF JUSTICE. I understand they are offered to prove a bad state of feeling on the part of the witness.

Mr. MERRIMON. But the witness acknowledges that.

The CHIEF JUSTICE. The respondent is not bound to take the witness's admission but they can prove the fact if they desire.

Mr. GRAHAM. I desire to know if the existence of this state of feeling has any tendency to show a justification for the arrest of the witness. I understand that the articles to which the attention of the witness has been called are censorious and charged the respondent with many things, but it does not justify a military arrest and the incarceration of the witness in jail. I cannot see that they are relevant.

The CHIEF JUSTICE. The presiding officer cannot tell whether they are or not until they are read.

Q. Look at the pieces marked in these papers produced and state whether they are editorials written by you?

The WITNESS. I insist, Mr. Chief Justice, that I ought to be allowed to state what they were—that they were replies to declarations on the part of the governor and editorials written by him.

The CHIEF JUSTICE. The only way is to introduce each of the editorials to which they reply.

Q. Look at this paper (producing paper of July 23d, 1870.) A. All these papers are copies of the *Sentinel*, and the articles written were written by myself or my associates—except the matter that is noted. They were written by mself or my associates—some one connected with the office,—but I endorse them and make them mine.

Q. And they were published by you? A. Yes sir.

Mr. GRAHAM. Unless it appears from the evidence that the matter sought to be introduced is relevant, I do not think the time ot the court should be consumed in introducing it.

The CHIEF JUSTICE. That question will not arise until the papers are offered in evidence. They have a right to identify the articles, and it gives the managers an opportunity now to know exactly what proof is intended to be brought in.

Mr. GRAHAM. I do not care about wading through these newspaper files.

The CHIEF JUSTICE. The presiding officer decides that it is competent to identify the papers.

Mr. GRAHAM. The point I raise is as to the relevancy of the papers to the issue when they are identified.

The CHIEF JUSTICE. That question cannot be determined until the papers are offered in evidence.

The witness identified the copies of the *Sentinel*, of July 21, 23, 27, August 2 and 3, 1870.

Q. Do you know whether Kirk was in Raleigh at the time you were arrested? A. I do not think he was. I have no means of knowing it.

Q. When did you first see him? A. At Yanceyville.

Q. You don't know whether he got there before or after you did? A. I do not know anything about it.

Q. When were you released? A. About the 19th August I think.

Q. Did Kirk give any directions about turning you out of that room where they first put you? A. Not that I know of.

Q. Were you kept in that room all the time you were at Yanceyville? A. I was kept in only one room. I was in the room up stairs three or four minutes. Then I was carried from there to that room where there were twenty prisoners from Alamance. I stayed there only a few minutes.

Q. I am requested to ask you whether you ever advised or counseled in any of your public speeches resistance to the military authority in the counties of Caswell and Alamance—a forcible resistance? A. I never did.

Q. You never did advise any forcible resistance at all? A. I never did. I did myself repeatedly in conversation say that they ought to be shot and hung up like dogs in the woods, but I never in any public speech said anything of the kind. I was only talking with my friends. I never made a speech in Caswell.

Q. You were not in the section where these military operations were going on. A. I was not, except as a prisoner.

Q. Did you use this language before you were a prisoner? A. Before I was arrested I frequently spoke of it.

Q. Did you use this language to any friends in the county of Alamance? A. No, sir, I was not in Alamance or Caswell except as a prisoner, and whilst I was a prisoner I did not have any opportunity of using it.

Q. How near is Hillsboro' from Alamance? A. It is about twenty-one or two miles from Graham.

Q. But from the county? A. I reckon the county line is about half way between the two places, nine, ten or twelve miles.

Q. Do you know anything about any secret organization—of a political character I mean? A. Nothing in the world. I never belonged to any of them of any kind or description and always denounced them.

Q. You have no knowledge of them? A. None in the world, nor of any man who belongs to them except by hearsay.

Q. I am requested to ask you whether a man did not come into your office representing himself as the south commander?

A. Never in the world. That was stated I know in the *Standard.* Three or four gentlemen came into the office to see me about some advertisements or subscription for the paper and one of them said, "This is the king of the Kuklux." The other said, "Is it?" I do not remember which one said so, I told him that that was what Holden said. Well, said he, "I reckon you can take such a one," speaking of one of the gentlemen, for south commander. It was all said jocularly. I never saw the man before that I know of. But they addressed me as "King of the Kuklux" or something of that kind and that is the way the thing came about.

Q. This was all said in a friendly, joking manner? A. Yes, sir, there were a half a dozen in the office.

Q. Did Col. Kirk ever treat you with any indignities? A. None at all.

Q. On the contrary did he not treat you courteously? A. Yes, sir, he did. He came in and offered to shake hands with me, but I put my hands behind me.

Q. Do you know whether it was brought to his attention, this mistreatment of which you spoke—the throwing of water on your bed? A. When I ran this fellow to the door Kirk came and directed this guard of seven men to be put in there.

Q. To protect you against such things? A. Perhaps so.

Q. Did he denounce the men for this misconduct? A. No, sir. There was no denunciation about it; he just sent out and ordered seven men to come into the room.

Q. To stay in the room? A. Yes, sir, they remained in the room.

Q. Did he say it was to protect you from such indignities? A. No, sir, it was for the purpose of punishment rather, I think.

Q. What were the men put there for? A. I do not know.

Q. But they were put there immediately after these indignities? A. That was after the water had been thrown upon me.

Q. The first or the second time? A. The second time.

I don't know but what he may have been the man who threw the water on me. I know it was one of the officers.

Q. You did not see him? A. No, sir, but I heard of it.

Q. There was nothing in his conduct towards you while you were a prisoner that lead you to suppose that he would throw the water? A. No, sir.

Q Did he say or not you were arrested by his order or direction? A. No, sir. He asked me what I was arrested for. I told him I did not know and had come to find out. He said he didn't know.

Q. Did he say that he did not know that you had been arrested until after it took place, and he did not know that you were to be arrested? A. That is what took place between us. The question was "What was you arrested for?" I told him that I did not know, that I had come to find out, and he said he didn't know.

Q. He, did not know what the charges were? A. No, sir.

Q. Did he say he had given any orders to arrest you? A. He did not say, he asked me what I was arrested for. I told him I had come to find out and he said he did not know.

Q. [By the Chief Justice.] You say that he said he did not know you were arrested until you were brought there? A. That may have been said. I do not remember the terms, the question was "What have you been arrested for?" I told him I did not know, that I had come to find out and he said that he did not know. That is the impression made on my mind.

Q. Was the import of what he said this, that he didn't know you were to be arrested, and didn't know you were arrested until it was all over? A. That he knew nothing about it. That is the impression he made upon my mind. I have given you his words as near as I can remember.

Q. I am requested to ask you whether you have ever known of any attempt to assassinate the Governor, and have interposed to prevent it? A. I never heard until now that any was ever made.

Re-Direct Examination.

By Mr. MERRIMON.

Q. Were any rocks thrown in at the place where you were confined? A. Yes, sir, while I was in jail, about midnight the first or second night I believe it was when we were in jail, rocks were thrown into the jail; but we were in a position where they could not hurt or injure us. We were not in any danger from the rocks.

Q. You stated in answer to a question propounded by the other side that you had on many occasions denounced the accused. I ask whether at any time he had denouneed you? A. Yes, sir, repeatedly, vilely and clandestinely.

Q. On many occasions? A. For years.

By MR. SMITH.

Q. Do you know the fact that he has denounced you—how do you get that information? A. I got it through newspapers.

Mr. SMITH. I object to the evidence as hearsay.

Senator JOHN W. GRAHAM, *a witness called on behalf of the Managers, being duly sworn, testified as follows:*

By Mr. MERRIMON.

Q. State whether you were present at any time when Josiah Turner, jr., was arrested by armed men, and if so what was said to you, if anything, by the parties arresting him, about it. A. The day after the election, on the 5th of August, when I was in the room with the county commissioners who were counting up the votes, I was informed that Mr. Turner had been arrested and I went then to the depot on horseback.

Mr. SMITH. I submit whether it is competent for the witness to prove declarations after the arrest. It seems to me that it cannotbe regarded as a part of the *res gestæ*. Anything said at the time of executing the order of arrest is admissible, but subsequent declarations I submit are not.

Mr. MERRIMON. We propose to show that while this man Hunnicutt with his armed squad had Turner in custody

at Hillsboro', he told the witness that he had arrested Mr. Turner by order of the accused.

The CHIEF JUSTICE. The presiding officer thinks the testimony is competent as part of the continuing act.

A. As I said I went to the depot accompanied by Dr. Strudwick, I believe on the way we were joined by Mr. Isaac Strayhorn, Mr. Turner's partner. I went to the depot, and when we got there I found Mr. Turner sitting on the outside of the depot on the plattorm in company with these armed men. I knew the officer in command of the company at Hillsboro', Capt. Hancock. There was another body of men there, a smaller body sitting on the side of the depot towards the track. Some were walking backwards and forwards before the window of the depot. There was one negro in the crowd—a yellow man whom I understood to be Aleck Ruffin. I did not know him myself. When I got there the first thing I heard was a remark from Mr. Turner, "D—d if we have not got peace now." Then the lieutenant came up to me and asked who I was and what I wanted. I told him my name, and stated that I wanted to see Mr. Turner and have some conversation with him, and inquire whether he wanted anything done or wanted any money. He told me I might see him. After a while the other gentleman went and saw him, and I took this lieutenant out to have a talk with him. I will try and recollect his very words, because it it is permitted I will state the object I had in going there, and the reason why I wished to impress his word upon my recollection accurately was because I knew that Judge Brooks would issue a writ of *habeas corpus*, and I supposed that other affidavits might be necessary by reason of the facts that occurred there on the application of Mr. Turner for his release. I therefore asked the lieutenant if he had no objection to state what authority he had for Mr. Turner's arrest. He said that he was arrested by the order of Governor Holden, and he said further "If you have come here about any writs of *habeas* "*corpus*, I have an order to arrest you." I asked him if he was afraid of any writs of *habeas corpus* after Colonel Kirk had

said the judiciary of the state was played out, he said "Not much, but these are my orders." I asked him then if any name was mentioned in the orders, he said "No." He said that the general order was that if anybody came with writs of *habeas corpus* to arrest them, as that was the order of Gov. Holden. I asked him how he knew that—if the orders came directly to him. He said no, but they were to Col. Burgen, and he said "I know that he has got an order for I have seen it." I had a good deal of conversation with him about where he was from, what service he had been in, but nothing concerning the arrest. My object in going there to see him was to get from him exactly what his orders were.

Cross-Examination.

By Mr. Smith.

Q. Who was this officer? A. Lieutenant Hunnicutt he told me his hame was. He told me that he was detailed by Colonel Burgen I think he said to take 10 men and come to Hillsboro' and arrest Mr. Turner.

Q. I understand you to say that he said he had seen an order? A. That is what he said.

Q. To Burgen? A. Yes, sir, from Governor Holden, that he had detailed him to take these men.

Q. Let me call your attention to this. Did he say whether it was an order to arrest Mr. Turner in the county of Alamance? A. Nothing was said about where he was to be arrested.

Q. But that he had an order to make the arrest in general terms? A. Yes, since you called my attention to it I will give his words. He said "I was told by Colonel Burgen that "I was detailed to go to Hillsboro' and arrest Mr. Turner," and he said "Col. Burgen had orders from Governor Holden "to do that, and I have seen the order." I will state what conversation I had with this other officer, Captain Hancock, if it is particularly material.

The hour of half past 2 having arrived the Court adjourned until to-morrow at 11 a. m.

NINETEENTH DAY.

SENATE CHAMBER, February 17th, 1871.

The COURT met pursuant to adjournment, Hon. Richmond M. Pearson, Chief Justice of the Supreme Court in the chair.

The proceedings were opened by proclamation made in due form by the doorkeeper.

The CLERK proceeded to call the roll of senators when the following gentlemen were found to be present.

Messrs. Adams, Albright, Allen, Barnett, Battle Bellamy, Brogden, Brown, Cook, Council, Cowles, Currie. Edwards, Flemming, Gilmer, Graham, of Alamance, Graham, of Orange, Hawkins, Hyman, Jones, King, Latham, Ledbetter, Linney, Love, Mauney, McClammy, McCotter, Merrimon, Moore, Morehead, Murphy, Norment, Olds, Price, Robbins, of Davidson, Robbins, of Rowan, Skinner, Speed, Troy, Waddell, Warren, Whiteside, Worth—44.

Senator GRAHAM, of Orange, moved that the reading of the journal of the proceedings of yesterday be dispensed with.

The CHIEF JUSTICE put the question on the motion of Senator Graham and it was decided in the affirmative.

Senator GRAHAM of Orange. Mr. Chief Justice, I desire to call attention to an error in my testimony as reported on page 567. I am printed as saying "I don't recollect that any "thing was asked of him whether he was brought before a "magistrate or not." The word "brought" should be "sworn."

JOHN W. GORMAN, *a witness called on behalf of the Managers, being duly sworn, testified as follows:*

By Mr. BRAGG.

Q. State whether you had any conversation with Governor Holden prior to the arrest of Josiah Turner, about Mr. Turner's arrest and if so when and where it was and what was said?

A. On the morning of the last election in August, I left my office and went to the court house to vote. There was a large crowd about the front door and as I had but a very little time to devote to that purpose I went to the back door for the purpose of getting in and flanking the crowd. I went into the passage and I met Governor Holden talking to a man by the name of Spooner. He spoke to me as I passed. As I could not vote just then, I stopped and as the matter he was speaking of to Spooner was about a subject of some interest, I listened. In the conversation I heard him say he either would, as soon as he left there or he had already ordered the arrest of Mr. Turner—I am not sure which, I have tried since I was summoned, to find out from my recollection so as to state the matter correctly whether he said he had then already done so or that he would when he left. It is my impression he said he would when he left.

Q. The remark then was either one or the other? A. Yes, sir.

Q. That he either had done it or would do it as soon as he left the court house? A. Yes, sir, I can't get the consent of my mind to fix upon either one. I am uncertain.

Q. But you are confident that it was one or the other? A. Yes, sir.

Q. What did you say to him, if anything? A. I told him it was not my put in, but I did so—that I thought it was a very bad policy, that Mr. Turner had been itching I thought to be arrested and he would only be making a martyr of him.

Q. What did he say to that? A. He replied to it that he believed Mr. Turner was at the bottom of all these troubles, that he had that morning published him as a white livered scoundrel—or something of that kind—I think it was that morning as well as I can recollect. I had nothing to do with the subject, but being a peace man I put that in.

Q. (By Senator Jones.) I wish to ask you whether Governor Holden said that Turner had published him as a white livered scoundrel or that he had published Turner? A. One of the

reasons why he was going to arrest him was that he believed Turner was at the bottom of this and that Turner had published him that morning.

Q. (The Chief Justice.) You understand him to say that Turner had published him? A. Yes sir.

Cross examination waived.

Mr. Manager SPARROW. A matter has been suggested, Mr. Chief Justice, in reference to the record to which the Stenographer desires the attention of the court called. It will be remembered yesterday that when it was asked Mr. Turner by the counsel for the respondent whether the statement in the answers were true or false, the witness said that they were as false as malice could make them. An objection was then raised that the answer was not admissible, and it was sustained. The stenographer desires to know whether the answer, having been ruled out shall appear on the record.

The CHIEF JUSTICE. The presiding officer is of the opinion that the answer in all cases should appear on the journal with the fact stated that it was ruled out.

ROBERT TERRELL, *a witness called on behalf of the Managers, being duly sworn, testified as follows:*

By Mr. MERRIMON.

Q. State your name, age, residence and business? A. My name is Robert Terrell. I am telegraph operator at Company Shops and twenty-one years old next October.

Q. State whether you have been summoned to produce all the telegrams sent to Company Shops? A. I was.

Q. Have you them with you? A. No, sir.

Q. Why have you not brought them? A. I sent them off before I was subpœnaed. I had an order to send them off.

Q. [By the Chief Justice.] Where to? A. To Richmond.

Q. When did you get the order? A. Do you mean the order to send them to Richmond?

Q. Yes, sir, to send them off? A. I got the order between seven and eight o'clock in the evening.

Q. What time was the subpœna served upon you? A. Between eleven and twelve o'clock at night.

Q. [By the Chief Justice.] What day? A. Monday, the 30th of January last, I think.

Q. Where were the telegrams when this subpœna was served on you? A. I don't know. I thought they had left on the train going to Greensboro'. I asked the express agent the next morning if he had sent them on that train and he said no, he had sent them by Raleigh. I supposed when the subpœna came that they had gone by Greensboro.

Q. They were in the express office of Company Shops when the subpœna was served upon you? A. Yes, sir.

Q. Did you know that at the time? A. No, sir.

Q. [By the Chief Justice.] How long after you had received this order was it when the the subpœna was received? A. I received the order at half past seven in the evening, and I received the subpœna about eleven o'clock that night.

Q. Have you made any efforts to get the telegrams back? A. Yes, sir, I did that morning.

Q. Do you have any control over them now? A. No, sir.

Q. Who has? A. I don't know as anybody has except the superintendent of the telegraph company.

Q. What is his name? A. His name is J. R. Dowell.

Q, Where does he live? A. Richmond, Va.

Q. State whether any person had requested you to send them off before you sent them.

Mr. SMITH. It seems to me, sir, that this is an indirect way the counsel are taking to impeach their own witness.

The CHIEF JUSTICE. The presiding officer is of opinion that what a stranger requested is not evidence unless he can be connected with the respondent as the person from whom he got his orders.

Q. State whether there were any regular times for sending off these telegrams from that office? A. None that I know of.

Q. When were they sent off before? A. This was the first time they have been sent off since I have been an operator.

Q. How long have you been an operator? A. About five years.

Q. Did you send them all off? A. I sent every message I had in my office up to that time.

Q. For five years? A. I do not know as many as that. I have not been there five years, but I sent all I had.

Q. Do you mean to say all the messages in the office at the time you received the order to send them—all that had accumilated there? A. All there were in there.

Q. For how many years had they accumulated when you sent them off? A. I do not know, I am unable to say, I had not been there over a half a year.

Q. Was the number small or large—were there a great many messages? A. There was a large number, a good sized box full.

Q. How large a box full? A. I suppose it was a foot wide and about the same length.

Q. [By the Chief Justice.] Would it hold a bushel? A. Yes, sir, I guess it would.

Q. Have you got the order with you that you received? A. Yes, sir.

Q. Will you produce it? A. Yes, sir, [produces the order.]

Q. Was that the order that you received? A. Yes, sir.

Q. You sent off the messages in pursuance of that order? A. Yes, sir.

Q. How soon after? A. In fifteen minutes afterwards I suppose.

Q. Read that order? (Reading,) "Richmond, January 30. "Shops, N. C. Pack up and send to me in Richmond the "entire files of your office. Do this at once. J. R. Dowell, Superintendent."

Cross-Examination.

By Mr. Boyden.

Q. This was last month? A. Yes, sir.

Q. What day? A. Monday.

Q. The 30th? A. Yes, sir.

Q. Are telegraph operators sworn not to disclose the contents of telegrams? A. I have not been sworn.

Q. You don't know whether that is the practice or not? A. That is the general practice I think.

Q. How did it happen you were not sworn? A. I do not know; there are a good many that are not.

Q. You have no right to disclose what is in a telegram? A.—

Mr. MERRIMON. I object, Mr. Chief Justice, that is a question of law.

Q. I mean by the rules of the company? A.——

Q. [The Chief Justice.] You can state whether by the rules you have a right to disclose the contents of telegrams? A. According to the rules of the telegraph company we have not.

Q. What is the rule? A. Not to show any message to any one.

Q. Or disclose it? A. Yes, sir.

Re-direct Examination.

By Mr. MERRIMON.

Q. You did write to the Superintendant to send these papers back? A. No, sir, I telegraphed to him.

Q. Did you get any reply? A. Yes, sir.

Q. Did you tell him they were wanted in court? A. Yes, sir.

Q. What reply did he make?

Mr. SMITH. Does the chief justice think the question is competent. It is an outside issue and there is no attempt to connect it with this accused.

Mr. GRAHAM. It is a matter, Mr. Chief Justice, that pertains to the witness. He was summoned by a subpœna *duces tecum* to bring these papers. It happened that he had sent them off a few hours before he was served with a subpœna. He then informs the person to whom he had sent them that a court of justice wishes the papers and we wish to show what his reply was to acquit the witness or if necessary to move for an attachment.

Mr. SMITH. But the difficulty Mr. Chief Justice is, that they bring out this matter as evidence to affect the accused and not the witness. They cannot offer it to affect the credit of the witness because they have endorsed him by bringing him here; and they have not moved for a rule against him.

Mr. MERRIMON. Mr. Chief Justice we offer this to show that there has been due diligence on the part of the witness and on the part of the managers to get these papers.

Mr BOYDEN. But what connection has it with this trial? That is a matter that I do not understand.

Mr. MERRIMON. It will be seen to be important.

The CHIEF JUSTICE. The presiding officer is of the opinion that the evidence cannot be received now without some motion made in reference to this man Dowell.

Mr. GRAHAM. But the difficulty Mr. Chief Justice is, that Dowell is not of the jurisdiction of this court. We desire to show that we have used due diligence.

Mr. MERRIMON. We want to show diligence on our part. There may be an argument founded upon the absence of these documents. The gentleman may say "Why did not the "managers procure these telegrams?" We propose to show that we instructed the witness to make an application to Dowell for the papers, and that having done so we wish to show what the reply was.

The CHIEF JUSTICE. The presiding officer thinks you are at liberty to show that the witness made the application.

Re-Direct Examination resumed.

By Mr. MERRIMON.

Q. Did you telegraph to Mr. Dowell for the papers? A. I did.

Q. What was the result of the application—were they returned? A. They were not.

Q. Did he decline to return them? A. Yes, sir.

Mr. GRAHAM. I respectfully submit that we ought to be allowed to show the terms on which the request was denied.

The CHIEF JUSTICE. The presiding officer thinks that is outside.

JOSEPH G. COOLEY, *a witness called on behalf of the Managers, being duly sworn, testified as follows:*

By Mr. MERRIMON.

Q. State your name, age, residence and occupation? A. My name is Joseph G. Cooley, age 24, residence Hillsboro', occupation a telegraph operator.

Q. Have you been summoned to produce certain telegrams before this court, if so when and what? A. I was subpœnaed on the morning of the 30th January to appear here with all the telegrams sent and received by me in regard to troops at Company Shops—state troops at Company Shops.

Q. Or Hillsboro'? A. At the Shops, messages received from or sent to the Shops.

Q. Have you got those telegrams? A. I have, but I received an order from the superintendent to answer no questions in regard to the messages.

Q. You decline to answer in obedience to that order? A. Yes, sir, on the ground that they are strictly confidential.

Q. You decline to produce them? A. Yes, sir.

Q. Were you then here? A. Yes, sir.

Mr. MERRIMON. The question arises whether the witness is bound to produce the messages. We insist that he is. The witness I understand simply desires to do his duty about the matter. This is a question of law, and if he is bound to I presume he will not refuse to produce the telegrams. We insist that he should do so, and that we shall have an opportunity to examine them.

Q. (By the Chief Justice.) Did they administer an oath to you? A. No, sir.

Mr. BOYDEN. We insist that there is no evidence showing the messages are material to this case, or anything before the court, and that the witness is not bound to produce any telegraphic dispatches that he has received unless it is made to appear that they are important in this trial. If they are impor-

tant we have no hesitation in saying that he is bound to produce them.

Mr. MERRIMON. How can we tell whether they are important until we have had an opportunity to examine them? I beg leave to cite the court to the investigation that took place some 18 months ago before a committee of the house of representatives in which the telegraph officers were compelled not only to bring in the telegrams in reference to a particular matter, but to bring all telegrams public and private to the end that the committee might examine them, and select such as they desired to use. So we contend here that it is the duty of this witness to produce these telegrams to the managers that they may examine them, and determine which ones are material to be produced and which not. It will not be denied that we have a right to examine a witness at chambers before he is put upon the stand and see what he knows, and see whether it is prudent to introduce him as a witness. If that is a right, can it be pretended that we have not a right to inspect these papers to see whether they are important or not so that we may select what we deem material.

Mr. GRAHAM. It will be remembered that it is only one species of telegrams that we call for, those which relate to these military operations. We do not claim to look at the private telegrams.

The CHIEF JUSTICE. The presiding officer is of opinion that you have a right to look at those which relate to military operations.

Mr. McCORKLE. I suggest this point, Mr. Chief Justice, whether the telegram is not to be regarded in the light of a copy and whether it is not incumbent upon them to produce in the first place the original as evidence to show that they have made due efforts to get it and have failed.

Mr. GRAHAM. I take it Mr. Chief Justice, that the place where the message is written down by electric force is where the original is. The other is nothing but a copy.

Mr. MERRIMON. We cannot produce the originals. We

propose to show that the original messages from which the telegrams were sent, were sent from Company Shops to Richmond and from Raleigh to New York.

Mr. SMITH. If that be so we desire to raise the point that the translation of the telegrams transmitted is but a mode of copying, and we submit that a party is not to be held responsible except for what he has written. It is true that in a document a foreign language offered in evidence, a party is sworn to translate, but the original is produced in court as evidence. It is only to make it intelligible that the presence of a translator is required. We submit that the original letter written in the English language as *contra*, distinguished from these telegraphic signs, is the original and must be produced.

The CHIEF JUSTICE. The presiding officer is of the opinion that the original is the paper sent to the office for transmission, and that the other is a copy. You have not yet accounted for not producing the original. It that is accounted for this copy can be received in evidence.

JOHN BRAGG, *a witness being called on behalf of the Managers, testified as follows:*

By Mr. MERRIMON.

Q. State whether you have any connection with the telegraph office in this city? A. Yes, sir, I am assistant telegraph operator in this office.

Q. State whether or not any telegrams have been sent away very recently, and if so by whose order and when? A. I think last month by order of the district superintendent, J. R. Dowell, of Richmond—all messages of last year were boxed up and sent to a man by the name of Hunter, the supply agent at No. 145, Broadway, New York.

Q. That is all the messages that were received during the year 1870? A. Yes, sir.

Q. They were sent away to New York? A. Yes, sir.

Q. What was done with the originals? A. All originals

and all copies of the messages were sent by his order. It was in anticipation of this——

The CHIEF JUSTICE. You need not state that.

Q. You sent them off? A I did not do it—it was the manager of the office, Mr. Starke.

Q. You know it was done? A. Yes, sir.

The CHIEF JUSTICE. That is sufficient to admit of secondary proof.

Mr. MERRIMON. I understand, Mr. Chief Justice, that we have a right to examine such telegrams as the witness has pertaining to military matters.

Mr. BOYDEN. We conceive that it is necessary first for them to show that they have made application to get the originals and have failed to do it.

The CHIEF JUSTICE. The presiding officer is of the opinion that the rule has been complied with by showing an attempt to get them from the place where they had a right to suppose they were.

Mr. MERRIMON. Will your Honor direct that the telegrams be filed with the clerk with the end that counsel on either side may examine them.

Mr. SMITH. I understood the decision of the chief justice to be that the original writings which were deposited in the office, were to be regarded as the originals and that those which were taken in telegraphic ciphers were the copies.

The CHIEF JUSTICE. Yes, sir.

Mr. SMITH. We insist that the existence of the paper outside of the jurisdiction of the court does not authorize the admission of secondary evidence. As I understand the rule they must be destroyed or lost. There is no difference between a state case and a civil suit in regard to the rule requiring the production of the original papers and not allowing the introduction of a copy. In both cases, if it is merely proved to be out of the state, its production is not dispensed with. This rule I am aware does not apply to the case of an attesting witness to a deed or other paper, as if it is shown that he is out of

the state, it is sufficient to prove his handwriting. If it becomes material to show a deed in evidence in this state you are not permitted to show a copy merely because the original is in another state and beyond the jurisdiction of the court. The managers know where these papers are, they are advised of the place and the papers are not lost but are in existence, and there has been no effort made to get them from that place, and we submit that they being out of the state does not dispense with the necessity of producing them.

By the CHIEF JUSTICE.

Q. What day did you send the dispatches off? A. I do not know, Mr. Starke sent them off last month sometime. I think ours were sent off two weeks before anything was sent from Company Shops or Hillsboro'.

The CHIEF JUSTICE. I should like to see the authorities in regard to proof of paper beyond the jurisdiction of the court.

Mr. GRAHAM. Mr. Chief Justice, papers of this kind are of such a modern invention that I doubt whether there could be found any authority referring especially to them in our note.

The CHIEF JUSTICE. I do not mean in reference to telegrams especially but in reference to deeds and other papers.

Mr. BRAGG. I suppose, Mr. Chief Justice, there can be no doubt that the general principle is laid down by the counsel who last addressed the court, [Mr. Smith] in reference to evidence is true. But as has been stated by my associate [Mr. Graham] this matter of the introduction of telegrams is a new question in our state and I do not believe—at least I have no recollection of it, that the question has ever been raised and been the subject of a judicial determination. I have an impression however, that it has been ruled on in some of the northern states where the telegraph is much more used and resorted to than it is here, and that it has been decided that a telegram received at one end of the line is a duplicate of the original filed in the office at the other end. I cannot undertake to say with positive confidence that it has been so ruled,

but I think a case of that kind is to be found somewhere in the New York reports.

Mr. BOYDEN. As I understand it, Mr. Chief Justice, they are not offered now but are only handed in for counsel to examine.

Mr. CHIEF JUSTICE. The impression of the presiding officer is, from the reason of the thing, is that the copy received at the place of destination is not to be regarded as a duplicate on the ground that there is an intervening agency through which the message is conveyed and which writes it down and that that agency may not correctly perform its office. It further suggests itself to the mind of the presiding officer on the reason of the thing, before the copy can be introduced it must be shown that efforts have been made to get the original where it is beyond the reach of the court. But as the counsel for the respondent suggests the paper can be filed with the clerk and examined by counsel and offered to-morrow. The witness is directed to file the telegrams with the clerk.

Mr. BOYDEN. It is understood that they are to be open for examination by each side.

Mr. CHIEF JUSTICE. Yes, sir.

JOHN B. NEATHERY, *a witness called on behalf of the Managers, being duly sworn, testified as follows:*

By Mr. MERRIMON.

Q. I believe you stated on a former occasion that you were the private secretary of the governor? A. Yes, sir.

Q. State whether or not you had the custody of any books by virtue of your office? A. Yes, sir, the letter book more particularly was under my charge.

Q. Look at this book now produced and see if that is the letter book? A. It is the official letter book of Governor Holden.

Q. What time does it embrace? A. From July 1st to November 17th, 1870.

Q. State whether you have been instructed to examine that book for any correspondence between Governor Holden and George W. Kirk and B. G. Burgen, and if so, whether you have made such an examination? A. I was instructed by the Managers to examine the book particularly on that point.

Q. See how many letters and telegrams you find from Governor Holden to either of them, or from them to him? A. I find one telegram to Colonel Kirk, and one letter to Colonel Kirk directed to him at Company Shops, and I think one directed to him at Yanceyville.

Q. How many does that make? A. It makes two letters and one telegram.

Q. Is that all the correspondence you find there between these parties? A. That is all I find.

Q. Did you hear the letters read here the other day which were sworn to have been found at the court house at Graham? A. I did not.

Q. Do you remember of my handing the letters to you to prove his handwriting? A. I remember certifying to a number of letters as correct.

Mr. MERRIMON. I was mistaken. It was Mr. Jenkins who I asked to identify them.

Q. Look at these letters [producing letters which had been previously produced by the witness McLean, and which will be found printed on pages 232, 233 and 236] are those letters in the handwriting of Gov. Holden? A. They are.

Q. State whether you find copies of them in this letter book? A. I do not.

Q. Give the dates of all the letters which have just been shown you for identification? A. July 1, 1870, July 28, 1870, July 30, 1870.

Q. You don't find those letters in that letter book? A. No, sir.

Q. State whether at any time Governor Holden appointed you to be a paymaster for any troops, and if so when and under what circumstances?

Mr. SMITH. I would state that the appointment was by a commission, which has been offered and given in evidence.

Mr. MERRIMON. I am aware of that fact, but I want to show what he did.

Q. State the time and circumstances under which you were appointed, and how you came to be appointed? A. I do not know as I can answer that question.

Q. Can you state what Governor Holden said to you? A. Governor Holden sent for me to come to his office. I was then private secretary. He invited me into his room, the executive office, and said to me that it was necessary these troops should be paid, and he asked me if I could suggest some suitable person to pay them. I told him I would think the matter over and report to him. I afterwards suggested a name to him, but I didn't hear anything more of the matter for some days.

Q. What name did you suggest? A. I suggested the name of the deputy sheriff of this county, Mr. Nowell. He said he would be a very proper man, and inquired about his ability to give the necessary bond, and he asked me to ascertain if he could do so. I inquired of one or two gentlemen if they would be sureties on the bond. I didn't hear anything more of it for some days afterwards when the governor sent for me a second time, and said that he had thought it best that I should be appointed paymaster to pay the troops myself. This was on the 3rd day of September, I think.

Q. What day of the week? A. I think it was on Saturday. I received a commission as inspector I think of the 10th brigade of militia with an order from the adjutant general to report to himas paymaster. I reported. I was very busy that day, and I heardnothing more of the matter until I was sent for the next night.

Q. What night was that? A. It was on a Sunday night that a messenger came and said that I was wanted at the treasury department, and I went there.

Q. What time? A. I think about 9 o'clock. I found Mr. Jenkins there, the teller.

Q. That is the young man. A. Yes, sir. He said he had received orders to pay me the moneys in his hands as paymaster.

Q. Who was there? A. Mr. Moffman the clerk in the treasury department.

Q. Any body else? A. I don't think there was any body else.

Q. Young Mr. Jenkins and Mr. Hoffman? A. Yes, sir.

Q. What was done? A. I will state I sent for Mr. Wetherell.

Q. Who was he? A. He was a citizen of this place. I sent for him to assist me in counting the money to see if it was right.

Q. Did you get any money? A. It was paid over to me.

Q. By whom? A. By Mr. Jenkins the paymaster.

Q. He was the former paymaster? A. Yes, sir, as I understood it.

Q. What did he turn over to you? A. Something more than $40,000—40,400 and odd dollars. I am not positive as to the amount.

Q. What did you do with it? A. I paid $10,000 to Major Berry.

Q. Who was he? A. He was the quartermaster and paymaster.

Q. Of what? A. Of the 1st regiment I suppose. I never saw his commission.

Q. He was an acting military officer? A. Yes, sir.

Q. By what authority did you pay that—did you have any orders? A. I think I had nothing more than a verbal order.

Q. From whom? A. I think I had probably both from the Governor and from the adjutant general who was paymaster general.

Q. To pay $10,000 to Mr. Berry? A. Yes, sir.

Q. For what purpose? A. To pay the 1st regiment at this place—Colonel Clarke's.

Q. What did you do with the balance? A. I proceeded to Graham——

Q. Let me first ask you if you know what Berry did with that money? A. I do not. I proceeded to Graham and found there Colonel Kirk's regiment, and after preparing the pay rolls I paid it to the officers and men there.

Q. To Kirk's officers and men? A. Yes, sir.

Q. How much? A. I do not remember the exact amount. I went there a second time.

Q. How much did you pay to these troops altogether? A. I paid to the troops there, and for military expenses here at the city something more than $65,000.

Q. What sort of money did you receive? A. Federal currency.

Q. How much did you pay to the troops yourself? A. something more than $65,000 according to my recollection.

Q. Does that include the $10,000 you got for Berry? A. Yes, sir.

Q. Where did you get the balance? A. From the sales of military property.

Q. Did you give any bond? A. I did not.

Q. You gave no bond you say? A. No, sir.

Q. What was the reason assigned to you for your appointment at that time? A. He assigned no reason.

Q. Did he tell you anything about the removal of Jenkins? A. No, sir.

Q. You didn't learn from the governor that Jenkins had been removed? A. No, sir.

Q. Had you heard anything about the injunction to restrain Jenkins from paying the money? A. Yes, sir.

Q. Did the governor say anything to you about that? A. I do not remember that he did.

Mr. McCORKLE. Mr. Chief Justice, we object to the testimony on the ground that neither the article nor the evidence

charges the Governor with any knowledge of the existence of this injunction.

Mr. MERRIMON. I should rather think it did.

Mr. SMITH. No, sir, it does not.

Mr. GRAHAM. It is not a matter of the least importance. The article charges the existence of a public proceeding in a court of justice and a process served upon the governor's paymaster enjoining him not to pay out the money, the removal of that paymaster from office, and then turning over the money to another paymaster. It is not necessary to aver that the respondent did this willingly and knowingly in a proceeding like this. It is sufficient to satisfy the court that the governor did know of it, and this is the way we propose to show he did know of it.

Mr. MERRIMON. It is not necessary to charge, Mr. Chief Justice, in articles of impeachment in the nicety of language that is necessary in a bill of indictment that the respondent had knowledge. It charges that this process from the court was issued, and was regularly served, and that the governor persuaded and procured and ordered the paymaster upon whom the process was served to disobey and evade it.

Mr. McCORKLE. Mr. Chief Justice, if we consider but for a moment the effect of testimony, whether responsible to the allegations or not, we can see at a glance it is improper, and why? Before the respondent can be convicted of crime in paying over public moneys where the treasurer of the State is enjoined from the payment of the sum it must be averred that he had knowledge of the fact, bacause if it is not so averred, then there was no crime at all. It is for that reason we object here that the article does not pretend to aver that the respondent had knowledge of the existence of this injunction at the time he appointed the witness a paymaster. What would better effect this testimony if it were let in? It would be simply to hold him responsible, and make him amenable for an offence with which he is not charged in the 8th article, and for that reason we think it is improper.

The CHIEF JUSTICE. Will you be good enough to read the article.

Mr. McCORKLE. It reads as follows:

"That the said William W. Holden, governor of the said "state, unmindful of the high duties of his said office, and the "obligations of his solemn oath of office, and contriving and "intending, and with a view and for the purpose of supporting "and maintaining an armed military force in said state, which "he had then and there recruited, organized and formed for "illegal purposes, without the sanction of the constitution and "laws of said state, but in contravention of the same, did from "time to time in the months of June, July and August, in the "year of our Lord one thousand eight hundred and seventy, "under color of his said office in said state, without the "sanction of the constitution and laws of said state and in "violation of the same, make his warrants as such governor "upon the treasury of the said state for large sums of money, "to wit: For the sum of eighty thousand ($80,000) dollars "and more, to be used for the unlawful purposes aforesaid: "that the said William W. Holden, governor as aforesaid, "under color of his said office, then and there persuaded, com-"manded, incited and procured David A. Jenkins, treasurer "of said state, to recognize such and said unlawful warrants on "the treasury of said state, and to deliver such and said sums "of money to such agents of the said William W. Hol-"den, governor as aforesaid, as he, the said William "W. Holden, governor as aforesaid, might from time "to time designate and appoint; that in pursuance of "such warrants and orders of the said Wiliam W. Holden, governor as aforesaid, the said David A. Jenkins, treas-"urer as aforesaid, delivered to one A. D. Jenkins, called "the paymaster, appointed by the said William W. Holden, "governor as aforesaid, for such purpose, large sums of money "from said treasury, to wit: the sum of forty thousand dollars "or more; that thereafter, to wit: in the month of August, in "the year of our lord one thousand eight hundred and seventy,

"one Richard M. Allison, a citizen of the county of Iredell, in "said state, brought his suit in the superior court of the last "named county, in his own behalf, and in the behalf of all the "tax payers of said state, praying that a writ of injunction "might then and there be granted and issued according to law, "restraining the said David A. Jenkins, treasurer as aforesaid, "from delivering any sum or sums of money to the said Wil- "liam W. Holden, governor as aforesaid, or any other persons, "in obedience to such orders and for such purposes, and also "restraining the said A. D. Jenkins, as such paymaster, in any "other respect or capacity from disbursing or disposing of said "sum of money so in his hands, or any part thereof, for the "purposes thereof. That the honorable Anderson Mitchell. "judge of said superior court, then and there granted the "writ of injunction so prayed for, enjoining and forbid- "ding the said David A. Jenkins, treasurer as aforesaid, "from delivering any money from said treasury, in obedience "to any such warrant or order so made by the said William "W. Holden, governor as aforesaid, and enjoining and forbid- "ding the said A. D. Jenkins, as such paymaster or agent, "from using or disbursing the said money or any part of it so "in his hands to or for the use of said armed body of men for "any of the purposes aforesaid; that the said David A. Jen- "kins, treasurer, and the said A. D. Jenkins, were each duly "served with said writ of injunction, but nevertheless, the said "William W. Holden, governor as aforesaid, wickedly intend- "ing to suspend and subvert the laws of said state, and to defy "and disregard the lawful authority of said court, did after- "wards, to wit: after the month last aforesaid, persuade, incite, "order, procure and command the said A. D. Jenkins to defy "and disregard the said writ of injunction, and to deliver the "said money so in his custody to another agent of the said "William W. Holden, governor as aforesaid, to be used for "the unlawful purposes aforesaid; that the said A. D. Jen- 'kins, in obedience to such last mentioned order, command "and procurement of the said William W. Holden, governor

"as aforesaid, and in disregard of such writ of injunction "and the lawful authority of said judge, did deliver the "said money so in his hands to another agent of the said "William W. Holden, Governor as aforesaid, to-wit: To "one Richard T. Berry, to be used for the unlawful purpose "aforesaid, and the said William W. Holden, governor as "asoresaid did then and there in the way and manner, and by "the means and for the purpose aforesaid, procure, order and "command the said A. D. Jenkins so to disregard and disobey "the said writ of injunction and the lawful authority of said "judge, and did then and there, and in the way and manner "and by the means and for the unlawful purpose aforesaid, "defy, disregard, ignore, contravene, suspend and defeat the "lawful purpose and effect of the writ of injunction—so granted "and issued by the said judge; and thereupon and thereafter "the said William W. Holden, governor as aforesaid, the said "sum of public money thus transferred as aforesaid to the "hands of the said Richard T. Berry, did order and cause to be "paid out and disbursed by him, the said Richard T. Berry, to, "for and about the illegal purpose aforesaid, to-wit: The payment "of the expenses in keeping on foot, sustaining and maintain-"ing the said illegal military force as aforesaid; whereby the "said William W. Holden, governor as aforesaid, was then and "there guilty of a high misdemeanor in his said office in viola-"tion of his oath of office, and in subversion of the laws of said "state, and the peace, interests and dignity thereof.

Your Honor will perceive that it does not appear upon the face of it that the governor had any knowledge whatever of the existence of this writ of injunction. The offer on the part of the managers is of what? Of evidence charging him with a crime which is not embraced in the article. It may be said by the counsel on the other side that we may draw an inference that he had such knowledge of it. We insist that in a proceeding like this it must appear in the article that the respondent had knowledge of this injunction before he can be

held criminally responsible, and that he must be charged with such knowledge.

Mr. BRAGG. It does seem to me, Mr. Chief Justice, that it is hardly necessary to say to the court about that matter that it is too plain to leave any doubt as to the charge of guilty knowledge on the part of the accused. The objection is that the article does not state in so many words that the accused had formal notice of this injunction.

Mr. McCORKLE. It does not state that he had any notice.

Mr. BRAGG. That it does not appear that he had any notice at all, either in words or in fact. Now let us see. The article charges that after this injunction had been issued against the paying out of this money and its service, the respondent did "persuade, incite, order, procure and demand the said A. "D. Jenkins to defy and disregard the said writ of injunction "and to deliver the said money so in his custody to another "agent of the said William W. Holden, governor as aforesaid, "to be used for the unlawful purposes aforesaid, that the said "A. D. Jenkins in obedience to such last mentioned order, "command and procurement of the said William W. Holden "as aforesaid, and in disregard of such writ of injunction "and the lawful authority of said judge did de-"liver the said money so in his hands to another "agent of the said William W. Holden, governor as "aforesaid, to-wit: To one Richard T. Berry, to be used for the "unlawful purpose aforesaid, and the said William W. Holden, "governor as aforesaid did then and there in the way and "manner, and by the means and for the purpose aforesaid pro-"cure order and command the said A. D. Jenkins so to disre-"gard and disobey the said writ of injunction and the lawful "authority of said judge, and did then and there and in the way "and by the means and for the unlawful purpose aforesaid, defy, "disregard, ignore, contravene, suspend and defeat the lawful "purpose of the writ of injunction so granted and issued by "the said judge."

If that does not charge a knowledge and a guilty knowledge

and a wilful disregard of the law there, Mr. Chief Justice, I do not know what the force of language is. I think there need nothing more be said on that point.

Mr. BOYDEN. Mr. Chief Justice, it is not a question whether the respondent actually had knowledge. We do not raise that point at all. The point we make is that the article does not charge that he had knowledge and we say they should have charged, in order to sustain the specification, that he had knowledge of this injunction being issued and that having such knowledge, in violation of his duty he ordered this money to be paid over. In their articles they allege that the whole thing was illegal, the raising of the military force, the issuing of commissions and the payment of the money—that everything was without warrant of law, and we say that no man can be convicted upon an indictment in a court unless it is alleged that these acts were done with knowledge, for that is the very gist of the question in this case. We say that it is not alleged he had the notice and that having such notice he disregarded the injunction.

The CHIEF JUSTICE. The presiding officer is of the opinion that although this article is expressed in general terms, yet in articles of impeachment it is not necessary to observe the same strictness in regard to circumstances as in a bill of indictment, that where it is alleged he wickedly persuaded and commanded Jenkins to pay over this money and to defy the injunction of the court, it implies necessarily that he knew of the injunction. The question can be asked.

By Mr. MERRIMON [resuming.]

Q. State whether he said anything to you about any injunction? A. I don't think he mentioned any injunction at all.

Q. What reason did he assign for appointing you? A. I do not think he assigned any.

Q. You knew about the injunction? A. I had heard of it.

Q. He said nothing to you why you were appointed or the necessity for it? A. Nothing except the necessity that the troops should be paid.

Q. Why could not Mr. Jenkins pay them?

Mr. SMITH. Mr. Chief Justice, we object to this colloquy between the counsel and the witness.

The CHIEF JUSTICE. The presiding officer thinks that where the private secretary of the governor is called under these circumstances more latitude should be given than in the examination of an ordinary witness.

Q. State any reason why Mr. Jenkins could not go?

The CHIEF JUSTICE. Did he give you any? A. He gave me none.

Q. Had you heard any imputation of corruption or incapacity against Jenkins? A. I do not think I ever heard him mention Mr. Jenkins' as paymaster at all.

The CHIEF JUSTICE. You mean Mr. A. D. Jenkins? A. Yes, sir, the young man.

Q. Who gave you the order to go to Mr. Jenkins and get the money? A. I had none.

Q. How did you happen to go? A. Mr. Jenkins sent for me.

Q. You received your orders from him? I received but one order and that was to report to the adjutant general for duty as paymaster.

Q. Did you report to him? A. Yes, sir.

Q. What did he say to you? A. He said that—I do not remember now what he said to me. I said I was very busy.

Q. Why is it that you cannot remember? A. I went to his table—he was temporarily occupying the same room that I occupied below and he laid this order on my table. I was very busy that day.

Mr. McCORKLE. We object to this evidence unless it was in presence of the governor.

Mr. MERRIMON. Certainly, Mr. Chief Justice, it is admissible. The adjutant general is the right hand man of the governor—his head military officer.

By the CHIEF JUSTICE.

Q. Who gave you your commission as paymaster? A. The adjutant general.

Q. What word did you receive about getting the money? A. I received word from Mr. Jenkins and I went to the treasury.

Q. The former paymaster? A. Yes, sir.

Mr. MERRIMON. The witness says that he was ordered to report to the adjutant general, and I ask him what the adjutant general said he wanted him to do.

Mr. GRAHAM. The adjutant general, Mr. Chief Justice, is as much the right hand man of the governor as the secretary of war is of the President of the United States.

The CHIEF JUSTICE. You can ask the witness what orders the adjutant general gave him.

Q. What did he say to you when you reported to him in an official way about the matters you were to be charged with? A. He said that Mr. Jenkins either had been or would be directed to turn over certain moneys to me.

Q. Were there any reasons given for that? A. No, sir.

Q. How did it happen that you did not give any bond? A. I do not know. Nothing was ever said to me about giving a bond. I was appointed on Saturday morning. A friend of mine had a child killed on that day on the railroad and I was with his family a part of the time during that afternoon and I attended the funeral the next day which was on Sunday. A messenger came to me on Sunday night that Mr. Jenkins wished to see me. I went to the treasury department.

Q. And received the money? A. Yes, sir.

Q. What caused you to go and receive the money on Sunday—what was the occasion of such an extraordinary movement? A. Mr. Jenkins sent a messenger—he sent no written order or letter—I went.

Q. What was the occasion of such haste? A. I do not know that I can assign any reason.

Q. Then you did not know why the money was given to you on Sunday evening, and have no means of knowing. I ask you this (if I am permitted to put the question under the rule) whether you do not know that the troops were clamorous

for their pay, and that the governor was anxious to pay them off and disband them, but they could not do it on account of the injunction.

Mr. SMITH. That I submit, Mr. Chief Justice, is a legal question. It is asking the hearsay of the witness, and whatever the witness may have heard ought not to affect the accused.

The CHIEF JUSTICE. You may ask the witness as to his own knowledge.

Q. How was that? A. I have no knowledge of the troops being clamorous.

Q. Did you see any troops in the capitol? A. I occasionally saw officers there.

Q. You saw no troops here at all? A. I saw some men in uniform, but I had no conversation with any of the officers or troops to my recollection.

Q. Was there no complaint made about delays when you went up there to pay them?

Mr. SMITH. We object to that question.

The CHIEF JUSTICE. The presiding officer thinks that the question is not competent.

Q. I ask you whether or not you know that the governor hurried up the payment in order to disband the troops?

Mr. SMITH. From anything you heard him say.

A. I had nothing to do with disbanding the troops.

Q. That is not the question I asked. I asked you whether you heard the governor say, or did you see him do anything that indicated a purpose to have these troops paid off, to the end that they might be disbanded? A. No, sir.

Q. [By the Chief Justice.] What was the date on which they were paid up there? A. It was during the week commencing the 5th of September. The pay rolls had to be made out after I reached there.

Q. Was it customary to do business of that sort in the offices on Sunday? A. I do not know that it was customary, I occa-

sionally did business in the office—in the private secretary's office.

Q. You occasionally transacted regular business on Sunday? A. that is, so far as writing a letter or something of that kind.

Q. Do I understand you to say that you wrote official letters on Sunday—was that the course of business in the executive office? A. Since then I have done it. I don't know as I did before. I had only been in the office a week then.

Q. Is Sunday included in the business hours at the capitol? A. Sunday is not ordinarily.

Q. State whether you are accustomed to do business on Sunday except in cases of emergency? A. No, sir.

Q. What was the emergency which occasioned you getting this money on this Sunday night?

The CHIEF JUSTICE. Do you know?

A. I knew of no emergency.

Q. You did not know there was any? A. No, sir, except in connection with what the governor said to me that it was necessary that the troops should be paid. That might have been the reason.

Q. State whether at any time the governor sent you to the county of Yadkin for the chief justice, and if so, what instruction he gave you?

Mr. McCORKLE. That question refers to what allegation?

Mr. MERRIMON. We allege that the surrender of the prisoners by the chief justice of the state was not voluntary, as the responpent alleges in his letter to the chief justice. We say that that statement was false and hypocritical, and that he was forced to surrender the prisoners by reason of the act of Judge Brooks. We offer to show a wicked and corrupt purpose, and the evidence has been admitted with that view. And we desire to show that the chief justice was sent for and under what circumstances.

Mr. BOYDEN. Mr. Chief Justice, we wish to be understood as objecting to the question. We do not see its competency at all. I do not know how it can be alleged that

because the governor returned certain prisoners at the command of the chief justice and brought them forth after having received them, it is material to show that Judge Brooks had issued writs commanding the respondent to bring these prisoners before him and that that was the reason why the respondent obeyed the other writ. How does that follow? How can it have any effect. It seems to me that it is not admissible as evidence at all.

Mr. GRAHAM. We allege, Mr. Chief Justice, that the respondent produced these prisoners under compulsion. The dates of the writs of Judge Brooks were not later than the 6th or 7th of August. A telegraphic correspondence takes place between the governor of the state and the president which is referred to the attorney general through the secretary of war and through the secretary of war an answer is telegraphed to the governor about the 7th or 8th of August. In the telegram to the president, the governor expresses his determination to hold the prisoners unless the United States soldiers are brought to bear upon him. Mr. Akerman replies advising that the authorities of the state submit to the jurisdiction of the federal judge, and then for the first time we hear the governor offering to give up the prisoners and assigning as a reason the peaceful condition of the state and the fact that they can be safely delivered. We say that instead of its being the true reason he was pressed by the process of the United States to comply with the writ of the chief justice. He found himself denied by the executive of the United States and with federal authority pressing upon him he made an inglorious retreat, and in his efforts to conceal the fact that it was inglorious he writes to the chief justice that the country now being in that pacific condition, the authority of the state can be administered in North Carolina and hence he gives up the prisoners.

The CHIEF JUSTICE. Read the allegation in the article which alleges that he disobeyed the writ of *habeas corpus*.

Mr. MERRIMON. It reads as follows: "That such re-
"fusal of the said George W. Kirk to obey the said writ, was

"made duly to appear before the said chief justice, whereupon "the said chief justice made enquiry of the said William W. "Holden, governor as aforesaid, if he had so ordered the said "George W. Kirk to seize, detain and imprison the said "Adolphus G. Moore, that the said William W. Holden, "governor as aforesaid, made answer in substance, and to the "effect, to said enquiry of said chief justice, that he had there-"tofore ordered and commanded the said George W. Kirk to "so seize, detain and imprision and deprive of his liberty the "said Adolphus G. Moore, that such seizure and detention "was made by his order and command, whereupon the said "chief justice upon due consideration, solemnly adjudged in "substance and effect that according to the constitution and "laws of said state, the privilege of the writ of *habeas corpus* "was not suspended, and that the said George W. Kirk and "the said William W. Holden, governor as aforesaid, unmind-"ful of his most solemn oath of office, and his high duties as "the executive of said state, and contriving, and then and there "intending to deprive the said Adolphus G. Moore of his "liberty as a free citizen of said state, and to defy and "subvert the constitution and laws of said state, declared "that he had so ordered, and did still so order and com-"manded the said George W. Kirk not to obey the said "writ so issued by the said chief justice, and then and there "declared to the said chief justice, that he the said William W. "Holden, governor as aforesaid, would not obey the said writ, "or the command of the said chief justice in that behalf, and "that he would not allow the said George W. Kirk to obey "the same and produce the body of the said Adolphus G. "Moore, before the said chief justice, according to the exigency "of said writ, until such time as in his discretion he might think "proper so to do; that while the said William W. Holden, "governor as aforesaid, so seized, held, detained, imprisoned "and deprived of his liberty, said Adolphus G. Moore, and so "refused to obey the said writ, and to command the said George "W. Kirk so to do, and so resisted the laws and the lawful

"authority of the said chief justice, he was by his own procure-
"ment, order and command, supported in that behalf by the
"means and use of said armed men, so commanded and con-
"trolled as aforesaid, and so the said William W. Holden, gov-
"ernor as aforesaid, did in the way and manner, and by the
"means aforesaid, procure, order and command the said
"George W. Kirk, so charged by said writ of *habeas corpus*, to
"refuse to make due return of or to the same and
"produce the body of the said Adolphus G. Moore, before
"the said chief justice, according to the exigency of
"said writ, and to resist the same and the lawful au-
"thority of the said chief justice, and did himself then and
"there in the way and manner and by the means aforesaid
"resist the due execution of the said writ, and the lawful author-
"ity of the said chief justice, and did then and there in the
"way and manner and by the means and armed force aforesaid
"suspend the privilege of the writ of *habeas corpus*, and did
"unlawfully and violently seize, detain, hold, imprison and
"deprive of his liberty, the said Adolphus G. Moore, and for
"a long time, to-wit: for the space of one calendar month,
"after the said chief justice had adjudged such detention illegal
"did continue to hold and detain and caused to be held and
"detained said Adolphus G. Moore, and did in the way and
"manner and by the means aforesaid, make the military super-
"sede and prevail over the lawful civil power of the state, all
"of which, acts, matters and things, the said William W.
"Holden, governor as aforesaid, did as aforesaid, in violation
"of his solemn oath of office, and whereby he the said William
"W. Holden, governor as aforesaid, did then and there com-
"mit high crimes and misdemeanors in office, against the con-
"stitution and laws of said state, and the peace, dignity and
"interests thereof."

Your Honor will observe that it is here alleged that the defendant declared to the chief justice that he would not surrender these men until in his discretion he should think proper to do so. Before offering this, we have offered evidence, which

was admitted, to show a wilful and corrupt purpose on his part and tending to show not the voluntary surrender of these men, but that he was forced to do so. We contend that taking his correspondence with the president, his actions here before the chief justice and all the facts in connection with the transaction, it is apparent that his action was coerced and on the same point we wish to show that the respondent sent, in a precipitate manner, for the chief justice, and at the very time when the action of Judge Brooks was imminent.

The CHIEF JUSTICE. The presiding officer is of the opinion that the evidence can be offered to show a corrupt intent. How far it will tend to show it is a matter for the court to determine.

Q. State the instructions you received in reference to going after the chief justice? A. I do not remember the day, but I think it was during the month of August.

Q. Cannot you fix the day? A. No, sir.

Q. Have you any means of fixing it? A. No, sir, I have not.

Q. Did you bear a letter to the chief justice? A. I did.

Q. Was it the date the letter was written? A. It was. I was sent for to go to Governor Holden's house at night.

Q. What time? A. About eight o'clock I should think. He said to me that he wished me to take a letter to Chief Justice Pearson at his home in Yadkin county and I left.

Q. When did he want you to leave? A. On the next train.

Q. When did you go? A. About one o'clock that night, or the next morning rather.

Q. State whether he furnished you with any money to pay your expenses? A. Yes, sir, he furnished me money.

Q. What instructions did he give you? A. Simply to deliver the letter to the chief justice.

Q. How soon—tell all you know about it? A. He wanted me to start on the next train and deliver the letter to the chief justice.

Q. Did he give you any particular instructions whether to do it in a hurry or to take your time? A. I don't know that he gave me any instructions. The presumption was that I should go at once.

Q. Tell all he said? A. I do not remember positively—I did not charge my recollection with it.

Q. State your best impression? A. My best impression is that I should proceed at once with the letter to the chief justice.

Q. How did you go? A. I went to High Point by way of the North Carolina railroad, thence by stage to Salem and then by private conveyance from Salem——

Mr. SMITH. Has this testimony anything to do with this case, Mr. Chief Justice?

Mr. MERRIMON. I think the importance of it will be apparent very soon.

Q. What did he say to you about a conveyance from Salem? A. I don't think he gave me any instructions about it.

Q. He made no suggestion about that? A. I think not.

Q. State what you did—did you go for the Chief Justice? A. Yes, sir.

Q. How long were you getting there? A. I left here at one o'clock in the morning. I reached High Point about seven and reached Salem about one and I reached—I took the wrong road and remained nearly all night on what I call a mountain, just this side of the chief justice's residence in Yadkin county.

Q. How late did you travel that night? A. I traveled I suppose till about ten o'clock—nine or ten. I stopped at a farm house and found I was on the wrong road. I remained there until morning.

Q. Then what did you do? A. I obtained a guide there and then proceeded to the chief justice's house and delivered the letter.

Q. How long did you stay at the chief justite's house? A. I suppose I was there two hours.

Q. Did you bring the chief justice back with you? A. He returned with me in the same conveyance.

Q. Were you instructed by the governor to bring him in the conveyance? A. I think he said he would come with me.

Q. State whether the governor said to you anything about the taking of a conveyance to bring the chief justice in? A. No, sir, the governor did not.

Q. Who did?

Mr. SMITH. We object to the question unless the respondent is connected with it.

Q. Did anybody in the presence of the governor? A. There was a gentleman in the presence of the governor.

Q. Why did you not tell that? A. I was not asked to tell that, you asked me if the governor told me.

Q. Who was it that was present? A. Mr. Ball.

Q. Who was Mr. Ball? A. He is a lawyer I think from Greensboro'. He pointed out to me the road I should go.

Q. Was the governor present then? A. He was present in the house? He told me the best road to go and stated that I had better procure a conveyance at Salem which would bring me and the chief justice back.

Q. How come Mr. Ball to be there with you and the governor?

Mr. SMITH. I object to the question as calling for matter totally outside of this whole controversy. Mr. Ball has not been brought into this matter until now.

Q. State whether Mr. Ball told the governor at the time you were present that he had been to see the chief justice and that the chief justice would come down? A. He did.

Q. In your presence? A. Yes, sir.

Q. What did the governor then say? A. I do not remember any conversation.

Q. State whether you understood from Mr. Ball in the presence of the governor, that the governor had sent him to see the chief justice? A. I do not understand your question.

Q. Did you understand that Mr. Ball had been to see the chief justice? A. I understood he had but I do not know how, or any thing about it.

Q. He did tell the governor that he had seen the chief justice and that the chief justice would come down? A. I understood him to say so—that is my recollection.

Q. Then he gave you instructions about the road and that was in the presence of the governor? A. Yes, sir.

Q. And told you to bring the chief justice in the conveyance you should take from Salem? A. He said he would be very likely to come if I took a conveyance that would bring him down.

Q. You and the chief justice left within two hours after your arrival at his house? A. Yes, sir.

Q. Where did you go to that night? A. We took dinner at Salem that day; we took supper at High Point and reached here the next morning.

Q. What time did you arrive here? A. I suppose about seven or eight o'clock in the morning.

Q. How near did you get to the chief justice's house the night before you arrived there? A. About three miles.

Q. What time did you reach his house? A. About sun up.

Q. And you staid about two hours? A. Yes, sir.

Q. And he left his home in the vehicle you took and you reached Salem in time for dinner? A. Yes, sir.

Q. Are you not mistaken about that—reflect a moment? A. We got here on schedule time I know.

How far was that? A. I do not know the distance.

Q. Have you not any idea? A. No, sir, I cannot say that I have.

Q. You got to High Point and took supper and then came here and took the cars and arrived here the next morning? A. Yes, sir.

Q. About what hour? A. About six or half-past six o'clock. We got here on schedule time the next morning.

Q. Did you not arrive here a little after twelve that night—

didn't the trains pass here? A. I do not know about the trains passing. We arrived here on schedule time and I think about the time I stated.

Q Was it midnight or the next morning? A. Come to think I believe it was about one o'clock in the morning, as you suggest. I have made a number of trips.

Q. Then you were gone how long? A. Two days and two nights—part of two nights.

Q. Did you make haste? A. Yes, sir, I did.

Q. Do you remember the morning you arrived with the chief justice here? A. I don't remember.

Q. I mean the day of the month? A. I do not.

Q. I ask you if you have any knowledge whether it was the day the writs were to be returned to Judge Brooks? A. I have not.

Q. Do you know whether the chief justice sat that day in court? A. I think he did.

Q. What time in the day after he arrived? A. I cannot say.

Q. Do you know that he sat? A. Only from hearsay.

Q. You did see him on the bench? A. No, sir.

Q. Did you not see anybody before him? A. No, sir

Q. Do you know whether there is a paper published in this town called the *Sentinel?* A. Yes, sir.

Q. How long has it been published to your knowledge—was it published during the year 1870? A. Yes, sir.

Q. Did that paper come to the executive office daily? A. I have seen it there. I cannot say it came daily.

Q. After you went to the office did you see it there every morning? A. I cannot say I saw it every morning.

Q. Do you know whether the governor read it? A. I think he did occasionally.

Q. Do you know whether he read it daily? A. I do not.

Q. Have you seen him read it? A. I have.

Q. Often? A. Yes, sir.

Cross-Examination.

By Mr. Smith.

Q. Was the letter which you carried to the chief justice afterwards published? A. I took a sealed letter to the chief justice—I think it was.

Q. It was the one that was published after in the proceedings? A. Yes, sir.

Re-Direct Examination.

By Mr. MERRIMON.

Q. How do you know that that is the letter? A. It is only an impression.

Q. Is it dated about the time you carried the letter to Judge Pearson? A. I think it is.

Q. Was it put on the letter book? A Yes, sir.

Q. It was copied in it? A. Yes, sir.

Q. That was the letter you carried to Judge Pearson? A. I think it was.

Q. The one that has been read in evidence on this trial? A. Yes, sir.

AARON D. JENKINS, *a witness re-called on behalf of the Managers, being duly sworn, testified as follows:*

By Mr. MERRIMON.

Q. State whether as paymaster of the state troops you received any money and if so under what circumstance and the amount you received? A. I received $66,000 in all.

Q. When did you receive the first? A. I have taken a memorandum of the vouchers. I received July 11, 1870, $1,000, July 14 $5,000, July 22d $60,000.

Q. What did you do with the first $1,000? A. I paid it out while it lasted for commissaries mostly I think.

Q. For state troops? A. For state troops.

Q. State whether at any time you paid George W. Kirk any money and if so how much? A. [After examining memoranda.] I paid George W. Kirk a sum of money while I was teller, while I was in the treasury department.

Q. How much? A. $1000. That was before I was appointed paymaster.

Q. When? A. I have not the date here but it was before I was appointed.

Q. Can you ascertain the date? A. I can by the books of the treasury.

Q. Was it in June or July? A. It was about the 21st or 22nd of June.

Q. By whose order did you pay him the $1000? A. It was on a warrant——

Mr. SMITH. Was it a written order?

Q. Did you not have that warrant in here? A. No, sir, I did not have it.

Mr. MERRIMON. We would like to have you supply that order.

Q. You say you paid Kirk about $1,000 about the 21st or 22d June? A. Yes, sir, I think it was about that time.

Q. You paid that on whose order? A. It was on a warrant issued by the governor's office, and countersigned by the auditor of the state. I think that was the form of the warrant —I am pretty certain.

Q. That was before you were paymaster? A. Yes, sir.

Q. After you became paymaster did you include the $1,000 in the amount of money you stated you received? A. No, sir.

Q. You didn't count that in the calculation of money you received at all? A. No, sir.

Q. You got the $5,000, when? A. About the 16th July, 1870.

Q. Did you disburse that on the state troops? A. A part, and part was used for advance payment to officers.

Q. What do you mean by advance payments? A. The officers of the state troops would come to the governor or adjutant and get an order on the paymaster to let them have so much money, and that was deducted when the pay rolls were made out.

Q. That was to pay money before it was due them? A. No, sir.

Q. How then was it advance paymments? A. It was in advance of the making out of the pay roll.

Q. You paid it to the officers and soldiers? A. To the officers. I don't think I paid any one more than was due to him. I tried to keep on my guard and not let any one overdraw.

Q. You say you disbursed $5,000 in that way? A. Some I paid for commissaries.

Q. But it went for the purpose of that military movement? A. Yes, sir.

Q. When do you say you received money next? A. On the 22d July $60,000.

Q. How did you happen to receive $60,000 at once? A. On the morning of the 22d Governor Holden sent for me to the treasury department—a messenger I think told me that the the governor wanted to see me at his office. I went in there and he told me that Mr. Horner, his clerk, would make out a warrant for $60,000 in my favor as paymaster. I went to Mr. Horner, he made it out, and either myself or Mr. Horner went to the governor and had him sign it, and I then took it to the auditor. The auditor was not here himself, but his clerk countersigned it, and I carried it to the treasurer and drew the money.

Q. $60,000? A. Yes, sir.

Q. What was the object of drawing $60,000 at that particular time? A. I don't know what the object was.

Q. State whether you heard anything about an injunction restraining the treasurer from paying? A. I heard it talked of that there would be an injunction, or that there might be an injunction—not that there would be.

Q. You received a warrant that day for $60,000? A. Yes, sir.

Q. What did you do with the money? A. I disbursed it in the same way I have described except $40,000, or a little over—$40,480.12.

Q. What became of that? A. That I paid to Mr. Neathery,

Q. State if you turned it over to him after the injunction was served upon you, and if so, under what circumstances? A. Some time in the latter part of August I received notice of the injunction.

Q. What was it—restraining you from paying that money? A. Restraining me from disbursing any of the funds as well as I recollect.

Q. Did you refuse to pay out any more money? A. I did until I received an order removing me as paymaster.

Q. How long after the injunction was served before you received the order? A. I have been trying to recollect when I received the order—I cannot tell, but it was some four, five or six days.

Q. The injunction was served four, five or six days before you received the order from the governor removing you? A. Yea, sir.

Q. Did he ask you to pay money out to these troops after that? A. He did not.

Q. He did not ask you to pay before receiving the order? A. I have no recollection.

Q. What time did you receive the order? A. I received the order on Saturday morning, September 3d.

Q. What time in the day? A. It was in the morning—I don't recollect what time, but some time before noon.

Q. What did you do when you received the order? A. I think the first person I showed the order to—I may have shown it to some person in the office—was ——

Mr. SMITH. We object, Mr. Chief Justice, unless it is connected with the accused.

Q. What did you do that day? A. I showed the order pretty soon after I received it to Mr. Bailey.

Q. Who is he? A. A lawyer, living in Salisbury I believe.

Q. State whether he was the counsel of the governor at that time? A. I think he was.

Q. [By Mr. Smith.] Do you know anything except from hearsay? A. No, sir.

Mr. SMITH. We submit, Mr. Chief Justice, that the testimony is not competent.

Mr. MERRIMON. I will connect the governor with him in a moment.

Q. State whether you saw him appear in behalf of the governor at the time the *habeas corpus* cases were tried? A. I think I saw him.

Q. Did you pay the money that day to Mr. Neathery in abedience to the governor's order? A. No, sir.

Q. Did you refuse to pay it? A. I did not.

Q. But you did not do it? A. No, sir.

Q. Why did you not? A. I wanted to consult counsel.

Q. Why did you want to consult counsel? A. I wanted to be certain whether I ought to.

Q. Why did you think you ought not? A. There was an injunction, and I wanted to know if the injunction prohibited me from turning it over to my successor after I was removed.

Q. Did you at any time after that day see the governor, and if so where and what did he say to you—I mean Saturday? A. I saw the governor. I don't recollect that he spoke to me that day at all upon the subject.

Q. When did you see him? A. I saw him the next morning, Sunday, about nine o'clock. I met Governor Holden on the front of the National hotel, and he spoke to me in regard to the order. I don't recollect exactly what he said.

Q. State the substance? A. The substance was when I would turn over the funds to Mr. Neathery as I recollect.

Q. What did you say to him? A. I did not give him a direct answer at all. I told him I would think about it and see him again.

Q. Did he want you to pay them over—did he say it was your duty? A. I don't recollect what he said particularly.

Q. You can state whether he wanted you to pay it? A. I think he said it was important to pay it over.

Q. You declined to do it then, but said you would see him

again? A. Yes, sir. I was just starting for church—or Sunday school rather.

Q. State whether you saw him afterwards, and if so where and what was done? A. In the afternoon of the same day.

Q. Sunday? A. Yes, sir, while at the National hotel about 3 o'clock a messenger from the governor informed me——

Q. Go on and state what you did in pursuance of the information you got from the messenger? A. I went to the governor's office in the capitol. He was there.

Q. What time in the evening was that? A. It was 3 or 3½ o'clock.

Q. Did you meet him there? A. The governor was there.

Q. Did he say anything to you of having sent a messenger? A. I don't think he did.

Q. State whether the messenger who came was the messenger who belonged to the executive office? A. I dont think he was. I think he was a colored boy. I don't recollect who he was.

Q. Did the messenger go with you to the executive office? A. No, sir, he returned at once.

Q. In obedience to the suggestion you went to the executive office. Who did you see there? A. I saw the governor and Mr. Bailey, I think.

Q. William H. Bailey? A. Yes, sir.

Q. A lawyer? A. Yes, sir, and I think Mr. Badger.

Q. Mr. Richard Badger? A. Yes, sir.

Q. What was said to you there? A. The governor asked me if it would be convenient to turn over the funds to Mr. Neathery that afternoon. I told him if I could see Mr. Neathery, and if I could get the funds out of the bank, I would turn them over.

Q. Did you hesitate about it? A. I hesitated very little after going to the office. I don't recollect anything that I said in hesitation.

Q. Why did you hesitate at all? A. I did not know whether

or not the injunction prohibited me from turning over the funds after I was removed.

Q. Did you turn it over until you were advised that it did not? A. I was advised by Mr. Bailey, or at least he told me I would have to obey the order.

Q. Was he your counsel? A. No, sir.

Q. Was he there as counsel for the governor?

Mr. SMITH. Only state what you know.

A. He was there with the governor. I only know from hearsay that he was his counsel.

Q. He was there at the time? A. Yes, sir.

Q. Did he state to you your duty in the presence of the governor? A. I do not recollect that he did.

Q. What was said when you went in there by any of these gentlemen? A. Really, I don't recollect the words that any of them used.

Q. Give the substance. A. The most that was said was about getting the money out of the bank.

Q. Was anything said to you about the injunction? A. I don't think there was.

Q. You say that you had had a talk with Mr. Bailey before? A. Yes, sir, I showed the order to Mr. Bailey.

Q. Did Mr. Badger say anything to you about it? A. I don't recollect that he did.

Q. I understood you that when you went to the governor's office he asked you if it was convenient to pay over the money to Mr. Neathery, and you told him forthwith that if you could you would? A. I may have hesitated at first. I do not recollect it.

Q. Do you know whether the governor said you ought to do it? A. I think he said it was important I should.

Q. Why was it important? A. I don't recollect that he assigned any reason. Some one during the conversation there said there might be some danger of the bank being enjoined, so that I could not get the money out of the bank.

Mr. SMITH. Who said that?

Mr. MERRIMON. Some one there present with the Governor.

Q. [By Mr. Smith,] was the Governor present? A. Yes, sir.

Q. You were paymaster, state whether there was any desire to disband these troops before they were disbanded?

Mr. SMITH. I object unless the witness states what he knows.

Q. Do you know whether there was any purpose to disband them which was delayed by reason of the injunction?

Mr. SMITH. State what you know? A. Yes, sir. I know there was some desire to have them disbanded.

Q. How many days before? A. I do not recollect how many days.

Q. State whether it was about the time the injunction was served on you? A. The pay rolls were being made out about the time the injunction was served, and my understanding was that at least a portion of them would be disbanded as soon as they were paid off.

Q. Did the governor know that the injunction was served upon you? A. He did.

Q. Did you tell him? A. I did.

Q. You don't know whether you stated it would compel you not to obey his order? A. No, sir, I don't recollect saying that.

Q. Did you tell the governor that you could not pay any more money by reason of that injunction? A. I don't recollect. I told him that my understanding was that it prohibited me—I aimed to convey to him the idea that I intended to cease paying while that injunction was existing.

Q. Did you pay out a dollar except when you paid it under the governor's orders? A. No, sir, I did not.

Q. Did the governor know you had not paid out any? A. I think he did—I don't know that he did.

Q. Did you tell him? A. I did not tell him.

Q. You told him that you would not pay any more money

after the service of the injunction? A. I don't recollect that I told him directly that I would not pay.

Q. I ask whether you and your father at one time did not say you would not pay any more money pending this injunction? A. I don't recollect.

Q. Was there an injunction served on your father also as treasurer? A. Yes, sir, there was.

Q. Do you know whether your father was reluctant to pay out any money under these warrants?

Mr. McCORKLE. We object to the question. It cannot be pretended that the witness knows whether there was a reluctance or not.

A. I do not know that he was reluctant for he was advised that it was his duty to do it.

Q. Who advised him? A. He consulted with the attorney general and other counsel also I think.

Q. As to whether he ought to do it? A. Yes, sir.

Q. Why did he do it? A. Do you mean why did he consult the attorney general?

Q. Upon what grounds did he pay it?

Mr. SMITH. I do not see the relevancy of this evidence. The treasurer is not an agent of the governor.

Mr. MERRIMON. We say that the governor is charged in the articles of impeachment with ordering and procuring the treasurer to pay this money and that the treasurer doubting his authority to pay it, had to consult counsel before he would do so and that then he paid upon the impression that was made upon his mind that he could look beyond the warrant, and that there was no personal liability upon him but that it lay beyond the warrant.

Mr. SMITH. We don't object, Mr. Chief Justice, to the secondary evidence of the acts of the governor, but we do object to showing the state of mind of the treasurer. The managers have a right to show what was done by the accused, but they have no right to go outside of that.

The CHIEF JUSTICE. The presiding officer does not

think it competent to show whether the treasurer was in doubt in reference to what his duty was.

Q. How did you get that money that evening? A. I first went to Raleigh National Bank. Mr. Wiley was not there. Some one told me he had gone to a funeral. I went to see Mr. Wiley and told him that I wanted to get the funds in his bank that I had deposited as paymaster. He told me he did not know what funds he had on hand but he said he would see.

Mr. SMITH. I will enquire respectfully what this testimony has to do with this proceeding.

Mr. MERRIMON. I desire to show, Mr. Chief Justice, that the respondent was in a hurry to get the money out of this bank for fear of another injunction.

The CHIEF JUSTICE. You have a right to show that.

Q. How did you get the money? A. Mr. Wiley told me that as soon as he returned to the bank he would see what funds he had and he appointed the time for me to come down.

Q. What time? A. I think he said about eight o'clock.

Q. Was that in September? A. That was on the 4th.

Q. At eight o'clock at night? A. Yes, sir. He went on to the funeral and I returned. As he stated he was not certain what funds he had on hand, I thought I would go to Williams' bank and see if he would cash my draft on the other bank. I went to see him and he said if he could see Colonel Anderson he would.

Mr. SMITH. Is this testimony material?

Mr. MERRIMON. We think it is.

Q. Go on—tell all that occurred? A. Mr. Wiley and I——

Q. I don't care about the conversation, state what occurred? A. Mr. Wiley sent over and got a buggy and said he would go and look for Col. Anderson. But he had gone to the funeral also. We rode out to the cemetery and did not meet him and then we went to his house. We got there sometime between sundown and dark. Colonel Anderson said he would cash my draft for $15,000 or $20,000 and said he would meet me at the

bank about the same time I think I had appointed to meet Mr. Wiley at his bank.

Q. Did you have any funds at Williams' bank? A. No, sir.

Q. Go on and tell what you did? A. I went to Mr. Wiley's bank at the appointed time and he paid me I think $15,000 in cash, and gave me a draft on New York for $10,000, I think.

Q. What did you take the draft on New York for? A. Because I wanted to turn over the funds to Mr. Neathery and I thought a draft on New York would suit him as well.

Q. Did you get any money from Williams'? A. Yes, sir. He gave me $15,000, I think. I am not exactly certain as to these amounts.

Q. Did he lend you that money or how did you get it? A. I gave him my draft certified at the other bank.

Q. He honored that draft? A. Yes, sir.

Q. Why did you not get all currency where your money was on deposit—why did you take a draft for a part? A. I am not sure, but I think Mr. Wiley stated that he could not pay it all in cash without paying out some of his legal tenders or something to that effect. I recollect that it was not convenient for him to pay all cash.

Q. What time was it that you got the money at the bank? A. It was about nine o'clock.

Q. Why were you in such a hurry to get it that evening? A. I don't know except that I heard in the executive office that the funds were to be turned over that evening.

Q. Why was the governor in such a hurry? A. He never assigned any reason to me.

Q. You got through at the bank about nine o'clock? A. Yes, sir, on Sunday night.

Q. What did you do with the money? A. I carried it to the treasurer's office.

Q. What did you do with it then? I had in the meantime sent for Mr. Neathery—no I am too fast. I went for Mr. Neathery after I had seen the bank officers but he had not returned. He had gone to the funeral also. I sent the watch-

man at the capitol after him, I do not recollect what time, but sometime during the evening.

Q. State whether he met you and if so at what hour? A. He came to the office.

Q. About what hour? A. I cannot tell—but about half past nine or ten o'clock.

Q. What did you do there? A. I told Mr. Neathery that I had been ordered to turn over these tunds that I had on hand as paymaster to him.

Q. What did you do? A. I drew up a receipt and he signed it, and I counted out the money.

Q. You turned the money over? A. Yes, sir.

Q. What time did you get through? A. We got through about twelve o'clock at night.

Q. Sunday night? A. Yes sir,

Q. Can you assign any reason why you were in such a hurry that night?

Mr. SMITH. I submit, Mr. Chief Justice, that the question is not proper. They must show what was done.

Mr. GRAHAM. The presiding officer has stated that more latitude can be allowed in examining a witness in such a proceeding.

Q. Did you give any bond as paymaster? A. I did not.

Q. Why did you not? A. One reason why I did not give it was, that when I was appointed my father, the treasurer, was not in the city. I expected him to go on the bond, but I kept putting it off, and I never did give it all.

Q. Have you got the warrant which was given for the $1,000 which was paid to Kirk? A. Yes, sir, I have received it since I went on the stand [producing it.]

Q. Do you recognize that paper as genuine? A. Yes, sir.

Q. What does it purport to be? A. The warrant of the governor on the treasurer for $1,000 in favor of George W. Kirk.

The CLERK read the warrant in evidence in the words following:

(Original.)

$1,000. No. 271.

STATE OF NORTH CAROLINA.

The Public Treasurer:

Pay to the order of G. W. Kirk the sum of One Thousand Dollars under "an act to secure the better protection of life and property."

Given under my hand and seal of office, this 21st day of June, A. D. 1870.

W. W. HOLDEN, Governor.

Countersigned

H. Adams, Auditor.

Per Jas. H. Adams, Clerk.

Endorsed on the back G. W. Kirk.

Cross-Examined.

By Mr SMITH.

Q. I understand you to say that when this injunction was first served on you you consulted Mr. Bailey with the view of honestly knowing what was required of you under the injunction, and what your duties were? A. Yes, sir.

Q. In order that you might comply with the laws of the state and the order of the judge too? A. Yes, sir.

Q. That was your object in consulting counsel? A. Yes, sir.

Q. And the advice was that it was your duty to pay over the money to your successor? A. I having taken an oath when I was appointed paymaster to obey the orders of the governor and then having been enjoined, it placed me as I thought in an awkward position and it required somebody who knew more about law than I did, to determine what I ought to do.

Q. Were you appointed paymaster or were you detailed? A. I was detailed.

Q. For that particular service? A. Yes, sir, I was appointed an aid-de-camp of the governor on the 22d.

Q. And then afterwards the governor revoked that detail? A. Yes, sir.

Q. When you spoke of acting as paymaster, you had reference to acting under the order detailing you for that service? A. Yes, sir.

Q. Having these funds in your hands you were advised as to whether you could pay them lawfully over to your successor, or whether you must retain them under that injunction? A. Yes, sir.

Q. And you acted in strict conformity with the advice given to you as to what your duty was? A. Yes, sir.

Q. Was that advice to the effect that as soon as your detail was revoked you had no right to hold them but should pay the funds over to some other officer? A. Yes, sir.

Q. And when the application was made to you by Neathery you gave him the funds in the way you have described? A. Yes, sir.

Q. Where did you keep the state account—in which bank? A. Do you mean the state treasurer's account?

Q. Yes sir? A. There are in different banks.

Q. You used both banks? A. Yes, sir.

Q. You have made a deposit of the funds entrusted to you in one of the banks to your credit? A. Yes, sir.

Q. Sufficient to cover the sum you took away? A. Yes, sir. I had some funds in the treasury—in the office perhaps four or five hundred dollars.

Q. On your application to the Raleigh National bank they did not have the funds? A. That was my understanding, that it was not convenient to pay it all.

Q. And the arrangement was made to get the balance from Mr. Williams? A. It was a mutual agreement all around.

Q. It was made to you on account of the deposit in the Raleigh National bank? A. I think Mr. Blake, the teller of Raleigh National bank, told Mr. Williams or Colonel Anderson that I had funds there.

Q. Wasn't the advice given you by Mr. Bailey that as long

as this detail was in force you could not pay over the funds, but as soon as it was revoked it was your duty to hand over the funds to your successor? A. Yes, sir, I recollect that Mr. Bailey argued that all the way.

Q. It was the opinion he gave you? A. Yes, sir, his opinion, both then and afterwards.

Re-Direct Examination.

By Mr. MERRIMON.

Q. Was Mr. Bailey your counsel at that time? A. He was not.

Q. Whose counsel was he? A. As I stated before, I understood he was counsel ——

Mr. SMITH. We object.

Q. You saw him with the governor? A. Yes, sir.

JOHN B. NEATHERY, *a witness in behalf of the Managers, being re-called at his own request, testified as follows:*

The WITNESS. I stated in an answer to a question put to me by Judge Merrimon that I received these funds in United States currency. I wish to say that I received a draft on New York for $10,000 for a part of it—I had forgotten the fact. The rest was in greenbacks or national currency.

ABIEL W. FISHER, *a witness on behalf of the Managers, being re-called, testified as follows:*

By Mr. MERRIMON.

Q. I believe you were examined before? A. Yes, sir.

Q. State whether there is in your office as adjutant general any telegrams or letters to or from George W. Kirk and B. G. Burgen? A. I think I have one letter signed by G. W. Kirk, addressed to the governor, not to me.

Q. Is that all? A. That is all I remember. I think there are no others.

Q. No correspondence there? A. None at all.

Q. Have you that letter in your possession? A. No, sir.

Q. I ask whether it is customary for the military correspond-

ence to go through the adjutant general's office? A. All orders would. I do not know necessarily that all correspondence would.

Q. [By Mr. Smith.] Is your order book here? A. No, sir, I do not know that it is. I turned it over to the managers, and I have not seen it since.

Q I ask whether all orders about the movements of troops, and letters in the nature of orders, pass through the adjutant general's office as a matter of business? A. I should think that all orders necessarily, and all letters in the nature of orders, would. That would be my impression.

Cross-Examination.

By Mr. Smith.

Q. Was there any order issued through your office for the arrest of Mr. Turner? A. No, sir.

Q. None whatever? A. No, sir.

Q. Was there any such order made by Governor Holden to your knowledge? A. Not to my knowledge.

Q. Do you know what directions were given by Governor Holden or communicated through you to these officers as to what they should do in making arrests in respect to the treatment of prisoners?

Mr. MERRIMON. We object to the question.

Mr. SMITH. Mr. Chief Justice, if the respondent gave any positive directions as to the proper treatment of the prisoners I ask if that is to be ruled out? When the managers undertake to hold the accused responsible for the ill-treatment of those held by him by saying that he authorized it, can we not show what instructions were actually given before their arrest and during their confinement? Would gentlemen rule that out? The treatment of prisoners is one of the subjects under investigation, and it is seriously claimed that we cannot extract from the witness the fact that instructions were given by the governor that the prisoners should be humanely treated.

Mr. GRAHAM. Mr. Chief Justice, the rule is that where a military order is claimed as a protection it must be in writing.

In 1814, during the last war with Great Britain, that question arose. The officer in command of fort Washington, nearly opposite Mount Vernon on the Potomac river, retired on the approach of the British troops, and blew up the fort. He said that he had a verbal order from General Armstrong to take that course. General Armstrong denied it. The officer was court martialed and sentenced to be shot by the court the judgment resulting from his inability to produce a written order. He was afterwards, however, pardoned by the president. Any military officer under the command of the governor who claims protection for his acts by reason of the orders of his commander-in-chief must produce a written order. The business is not to be conducted in a slovenly manner by sending verbal orders. If it is, then those chargeable with this losseness in the details of managing public affairs must take the consequences. It is no avail what the governor may have said in his conversations with the adjutant general, words thus spoken cannot be admitted here to protect him. He must produce his written orders.

Mr. SMITH. Suppose, Mr. Chief Justice, that when Colonel Kirk went to Alamance the governor had written to him expressly to act without any indignity to anybody, and to prevent his troops from committing any outrage upon any citizen, will the gentlemen say we cannot show that in his defence, and that he is to be held responsible by the iron rule that what his agent said in the progress of the expedition is conclusive and binding upon him? The instructions of the respondent to his agent are facts going to make the sum total of his conduct; and when he undertakes to show, if he can show, that all this barbarity and wrong (for which there is no apology) was not the result of any act of Governor Holden, and was not authorized or approved by him in any way, surely it ought to be received to rebut the presumption that he authorized it, because it is the declaration of a party while the expedition was being carried out.

Mr. GRAHAM. Mr. Chief Justice, there is another case

which is referred to in the argument of counsel in the case of *ex parte* Milligan in 4 Wallace. An officer on board ship was ordered to arrest a brother officer and he demanded from his superior officer a written order which was refused. In the absence of such written order the junior officer refused to make the arrest. For this he was arrested and tried by a court martial and sentenced to fine and imprisonment. Subsequently he brought an action in a civil court against the president of the court martial and recovered damages for his illegal detention and sentence, and he was informed by the judge that he might also bring his action against any other of the members of the court martial which tried him. Two of the members of the court, when the damages were awarded, were sitting in a naval court martial and the officer commenced his action against them also and they were arrested by a writ from the court just as the court martial adjourned for the day. The members of the court at once passed resolutions declaring it to be a great insult to the dignity of a naval officer to have him called to an account in a civil court for any of his official acts. Lord Chief Justice Willis immediately ordered the arrest of all the members of the court who signed the resolutions and they were taken into custody.

The CHIEF JUSTICE. What was the decision in that case.

Mr. GRAHAM. Even the king was indignant at the arrest of the members of the court martial, but in the end all the officers signed a humble and submissive agology, begging leave to withdraw their resolutions.

Mr. McCORKLE. Mr. Chief Justice we propose to ask the witness the following question: "What were the general "orders you received from the governor in reference to the "treatment of prisoners to be conveyed to George W. Kirk?

We think think that question is competent for this reason. The witness is the adjutant general of the state and he is supposed to carry out the orders of the commander-in-chief. Suppose that the witness had neglected to make an order required by

his superior officer, certainly it would be competent to show the fact that he was requested to make it.

The CHIEF JUSTICE. The presiding officer decides that the question is admissible and that the evidence is relevant, provided it establishes the fact. He is not conversant with military rules but he thinks the governor has the right to prove that he instructed the witness either in writing or verbally to give certain orders. The case referred to by the counsel for the managers [Mr. Graham] in which General Armstrong was involved was where a subordinate officer was unfortunate in having only a verbal and not a written order, if he had any at all, and the question was one of veracity between the two officers. It an officer chooses to act upon a verbal order, there is no rule of law that I know of which requires that he shall not act in conformity with it. It may very well be, that if he demands a written order he should have it. The question may be asked.

By Mr. SMITH, [resuming.]

Q. What were the general orders you received from the governor in reference to the treatment of prisoners to be conveyed to George W. Kirk? A. The governor's orders as I understood them——

Mr. Manager SPARROW. Do not state what you understand but what you know.

Q. Give your knowledge? A. To the best of my knowledge and belief——

Mr. Manager SPARROW. We do not want your belief.

The CHIEF JUSTICE. The witness must state what the governor said.

Mr. GRAHAM. We submit, Mr. Chief Justice, that while it is competent to prove the directions directly given to Kirk the verbal instructions given second handed through the adjutant general are not admissible.

By the CHIEF JUSTICE.

Q. What orders were given you? A. I remember a clause

in one, that he should take special care that the prisoners were not maltreated or abused.

Q. What do you mean by the clause? A. I mean a clause in one of the orders.

Q. An order that you wrote out? A. Yes, sir.

Mr. MERRIMON. Where is that order?

The WITNESS. It is in the order book.

Mr. GRAHAM. Then parole evidence of it cannot be given.

Q. The governor gave you a verbal order and you communicated it by a written order? A. Yes, sir.

The order book was here produced and the witness read heading of the order referred to in the words following:

"State of North Carolina, Adjutant General's office, Raleigh August 7th, 1870"——

Mr. GRAHAM. That, Mr. Chief Justice, is certainly not competent. It was issued after these arrests had been made and the outrages had been perpetrated.

The CHIEF JUSTICE. I understand there were some cases of abuse after the date of the order. Did not the troops go from Caswell to Alamance about the latter part of the month.

Mr. Graham. About the 12th of August. The prisoners were taken to Salisbury on the 18th.

Mr. MERRIMON. Mr. Chief Justice, we desire to be heard upon this question. These outrages that have been testified to were all perpetrated before the date of that order except the imprisonment of Turner. The order comes in *post litem motem*. The accused allows them to go on until he is compelled by both the state and federal judiciary intervening, and finding himself denied support by the President of the United States he then issues the order. We insist upon the plainest principles of evidence the order is not admissible.

Mr. SMITH. The point, Mr. Chief Justice, is this: it is a part of the demeanor of the accused towards these prisoners while in his custody. One of the enquiries here is as to outrages inflicted upon the prisoners while in the custody of these

troops. These instructions of the executive are acts. What their effect shall be is a matter of argument.

Mr. CHIEF JUSTICE. The presiding officer thinks that the evidence is competent. It may weaken its force that the order was made during the latter part of the imprisonment of the parties arrested; but if it was made during the imprisonment it is competent. What is the date of the order?

The WITNESS. August 7.

Mr MERRIMON. Will the chief justice allow me to state one additional view?

The CHIEF JUSTICE. Yes, sir.

Mr. MERRIMON. A party is indicted for murder. He offers to show what took place the day after the murder was perpetrated by way of exculpating himself. It seems to me that the evidence offered here is analogous to a case of that kind. When the man has inflicted the fatal stroke, nothing that transpired afterwards can be admitted in evidence to show justification or excuse. These outrages were perpetrated days and days before this order was issued.

The CHIEF JUSTICE. The presiding officer is not able to see the application of the case suggested by the counsel for the managers, [Mr. Merrimon.] He is aware that a good many of the acts charged occurred before the 7th of August, but there were certainly some that transpired after, among them compelling the prisoners to stay out in the rain all night. The treatment of Mr. Turner is another instance. The presiding officer thinks the evidence is competent although its force may be weakened by the fact of its coming in so late during the period of the imprisonment of the parties. The witness will read the order to which he refers.

The WITNESS read the order in the words following:

STATE OF NORTH CAROLINA,
Adjutant General's Office,
Raleigh, August 7, 1870.

Special Orders, No. 14.

Col. G. W. Kirk, commanding 2nd Regiment N. C. S. T.

will parole all his prisoners in whose honor he can confide to report to him at Company Shops, at 10 o'clock a. m., on that or the next day. He will also take the necessary steps to secure the attendance of all the witnesses at this time.

Col. Kirk will leave one hundred picked men under competent officers at Yanceyville, and leave the rest of his men with baggage, at Company Shops, taking special care that his prisoners are not maltreated or abused.

By command of Gov. Holden.

A. W. FISHER, Adjt. Genl.

By Mr. SMITH [resuming].

Q. Is there any other order sent to Kirk? A. Yes, sir, I find another order under date July 13, being special order No. 11.

Q. You may read it?

The WITNESS read the order in the words following:

STATE OF NORTH CAROLINA.
Adjutant General's Office,
Raleigh, July 13th, 1870.

Special Orders. No. 11.

Col. G. W. Kirk, commanding 2nd regiment North Carolina state troops, will at once procure necessary transportation for his camp equipage and proceed to Yanceyville and assume command of Alamance and Caswell counties.

He will take the necessary steps to preserve order, and to give the fullest protection to life and property.

He will take charge of the public buildings, and arrest and hold for examination persons accused of felonies, especially those charged with, or being accessary to the murder of J. W. Stevens and Wyatt Outlaw.

By command of Governor Holden, commander-in-chief.

A. W. FISHER, *Adj't Gen'l.*

Mr. GRAHAM. That is an order we put in several days ago.

Mr. BOYDEN. We are much obliged to the managers for having done so. But it does no harm to have had it read again.

Q. Do you find any other order? A. I do not find any other bearing especially on the treatment of prisoners.

Q. State whether you heard any verbal instructions given to Kirk or to any of his other officers before they went out or while these things were going on, as to how he should act towards the people.

Mr. MERRIMON. You will speak from your own know ledge.

Q. I mean what you have heard the governor say? A. I do not remember of hearing any conversation on that subject.

Q. Did you hear anything of the kind I have indicated to you when Kirk was present? A. No, sir.

Q. When you issued orders yourself had you any directions from Governor Holden as to what should be the nature of the orders? A. I had.

Mr. GRAHAM. I submit that only the orders sent to the troops are admissible.

Mr. SMITH. What I am inquiring for are the instructions given the accused to this officer.

Mr. GRAHAM. It is not competent to prove instructions given by him which are not proven to have reached the military.

The CHIEF JUSTICE. The presiding officer thinks it is competent upon the ground that the court is enquiring into the animus. It certainly shows his intent as to the orders.

Mr. BRAGG. I would like to ask the witness a preliminary question.

By Mr. BRAGG.

Q. Did you send all the orders that were given you? A. All that were sent to me to forward.

Q. Did you record them in that book? A. Yes, sir.

By Mr. SMITH [resuming].

Q. What were the general directions as to the form in which orders ——

Mr. BRAGG. I object.

Q. Are verbal orders ever given to you and you put them in form? A. That is frequently the case. Sometimes verbal orders are given and sometimes written, and I write them out and submit them.

Q. Did the governor give you any instructions or directions in reference to issuing orders how the prisoners were to be treated which you did not send?

Mr. BRAGG. We object to that. The witness has stated that he sent all orders which were given to him.

Q. Did the governor give you any general instructions or directions as to what should be the nature of your orders transmitted to the military out there?

Mr. BRAGG. We submit, Mr. Chief Justice, that the question is not admissible. The adjutant general is the man through whom the commander-in-chief issues his orders. In reply to a question put by me whether he had sent all the orders the governor had issued or directed him to issue, he said "yes." Now the gentlemen desire to prove some loose conversation between the respondent and the witness as to what his purposes were. I submit that it is too indefinite.

The CHIEF JUSTICE. The counsel forgets that the gentleman is cross-examining a witness called on behalf of the managers on the very point to which the counsel's question was directed. He is seeking, if possible, to get him to reverse his statement.

Q. I desire to know whether any directions or instructions were given to you by Governor Holden which were not put in shape and sent out in relation to the treatment of prisoners—not specific orders but general orders?

Mr. BRAGG. There it is, Mr. Chief Justice, the counsel is seeking to inquire about something expressive of the wishes of the governor—not that those wishes were put into the shape of orders. We object to that kind of testimony.

The CHIEF JUSTICE. Will the counsel repeat the question?

Q. My inquiry is whether any general instructions were given

you by the Governor as to the orders to be issued which were not put in shape or form of orders and transmitted, if so, what were they?

The CHIEF JUSTICE. The witness can answer the question.

A. I hardly know how to answer that. Of course I had frequent conversations with the governor as to the treatment of prisoners. I suppose his idea to be included in the orders issued, was that the prisoners were to be treated humanely and kindly.

Q. That was the scope of his directions and instructions to you? A. Yes, sir.

Q. I desire to ask you another question. When it was communicated to Governor Holden that the prisoners had been maltreated what his directions to the officers were, and whether he sanctioned that treatment.

Mr. GRAHAM. Mr. Chief Justice, I think we had first better know whether there were any directions, and if so, if they were put in writing.

The CHIEF JUSTICE. The presiding officer thinks that on cross-examination the counsel has a right to assume certain things, and to put his question upon such supposition.

Mr. GRAHAM. I had supposed, Mr. Chief Justice, that in a matter so important as the hanging of men to extort confessions coming to the knowledge of the commander-in-chief he would give some peremptory instructions, and not leave his wishes to be expressed in loose conversations.

The CHIEF JUSTICE. That is a matter of argument hereafter.

Mr. BRAGG. I beg to have the question put in writing. The gentleman talked about the "general scope." What he means by the general scope is not apparent.

Mr. BOYDEN. The question has been already answered.

The CHIEF JUSTICE. It is the right of the counsel to have the question reduced to writing.

Mr. SMITH. This is my question as I have written it down

State what were the general directions given to you by the governor as to the treatment of prisoners and the conduct of troops to be observed in all orders sent through your office?

Mr. BRAGG. That varies the question. It is not the one the counsel asked the witness before.

Mr. SMITH. It is the one that I ask now.

Mr. BRAGG. Do I understand the counsel to withdraw the other question.

Mr. GRAHAM. I submit, Mr. Chief Justice, that this question just read is indefinite.

Mr. SMITH. I think, Mr. Chief Justice, that we have a right to ask this question.

The CHIEF JUSTICE. The question is admissible.

The CLERK read the question as follows:

Q. State what were the general directions given by the governor to you as to the treatment of prisoners, and the conduct of troops to be observed in all orders sent through your office? A. It was that the prisoners should be kindly and humanely treated.

Q. Do you now know whether when he heard of any indignity to these prisoners he expressed any approbation or disapprobation—I mean during the time the prisoners were in custody?

Mr. GRAHAM. I object to any conversation which the governor may have had with the witness.

Senator GILMER. I would inquire, Mr. Chief Justice, if the admissibility of questions of this character and was not decided the other day?

Mr. SMITH. On what occasion I would enquire.

Senator GILMER. On the proposition as to what the respondent stated as to the treatment of prisoners.

Mr. SMITH. There has been no decision that what the respondent said during the time the prisoners were in custody was not admissible.

Mr. GRAHAM. Mr. Chief Justice, the proposition is to give in evidence the remarks made by the respondent in

reference to the treatment of prisoners. The question should be what instructions did he give to prevent the recurrence of the maltreatment?

Senator JONES. I think, Mr. Chief Justice, that this examination has gone to an improper length, I move that the question be disallowed.

Mr. SMITH. I would like to put the question in writing before it is to be determined upon.

The CHIEF JUSTICE. The presiding officer would suggest that the question be directed to some particular time.

Mr. SMITH. I will reduce the question to writing and will hand it to the clerk.

The CLERK read the question in the words following:

Q. Do you know when at any time during the period of the imprisonment of the persons arrested, the information of the maltreatment of them was communicated to the accused, what he then said and did?

Mr. MERRIMON. We object to the question. If that can be admitted it will permit every man who has been in the governor's office or has met him in the streets to come in and state loose conversations that may have transpired between himself and the governor.

Mr. SMITH. The gravamen of this charge is that the governor sanctioned and approved the series of outrages and is responsible to the country on this impeachment for the acts of his subordinates. Under that charge it is claimed we cannot show that during the very interval he repudiated and disavowed those acts and that he cannot be permitted to prove that he instructed the adjutant general to direct the prisoners to be treated with humanity? What the governor said and did during that period is the enquiry here; surely the declarations of the respondents are acts; and his conduct must be seen and known by this court in order to ascertain whether the charge of the managers that the governor acted from a corrupt and wilful purpose, is true.

Mr. MERRIMON. What I say, Mr. Chief Justice, is that

the loose conversations of the governor with the adjutant general or with anybody else are not to be admitted in evidence, because they are indefinite and unsatisfactory and because, according to law and according to military ethics, and according to all propriety when each acts as these were brought to the attention of the respondent, it being his duty (not only as governor but as a civilized man having authority to do so,) to issue peremptory orders to prohibit those acts and to arrest and try by court martial the officers and men who had perpetrated the outrages, such orders are the proof that he should offer. There is no rule of reason or of justice that will allow the respondent to prove here any loose conversations he had in reference to the hanging of Patten.

Senator ROBBINS, of Rowan. There is one point, Mr. Chief Justice, in this connection that I would like to hear the counsel upon. Suppose the remark were made to such person that its effect would be to operate as a rebuke and thus tend to stop further acts of oppression on the part of the governor's agents, would not such remark addressed to such agent be competent when remarks if made to an indifferent person would not be admissible as evivence?

The CHIEF JUSTICE. The presiding officer is of the opinion that the question cannot be put. It falls under the rule of evidence, that the state cannot offer anything that a prisoner has said, and a prisoner cannot manufacture testimony for himself. If it is proved that Gov. Holden heard of these outrages, then they would be at liberty to prove what he said: but unless you see proper to carry the knowledge to him, his mouth is shut upon the rule that no man can manufacture testimony for himself.

Q. Were you present when any conversation took place between Gov. Holden and Kirk or Burgen, or any of these officers, in relation to the treatment of these prisoners during the time that they were in custody? A. I do not remember any such occasion.

Q. Do you know whether or not an order was issued by

Gov. Holden for the arrest of Burgen? A. There was.

Q. [By Mr. Graham.] Where is it? A. It is in the book.

Q. [By Mr. Graham.] What is the date of it! A. August 22d, 1870.

Mr. GRAHAM. At that time these men were out of custody.

The CHIEF JUSTICE. The presiding officer is of the opinion that it is competent to show that Burgen was arrested afterwards.

Mr. GRAHAM. I respectfully submit that anything that took place in reference to the arrest of Burgen after these men had been delivered from prison, is a matter of no consequence in this investigation at all. That was a matter between him self and Burgen. It was an act done long after any act pertaining to the controversy now pending. If proof can be allowed of his arrest on the 22d day of August, it is equally admissible to admit proof of his arrest in December. I submit it is simply allowing the respondent to manufacture evidence in his own behalf.

The CHIEF JUSTICE. The presiding officer is of the opinion that the question does not fall under the rule of evidence manufactured by the defendant in his own behalf. The respondent has a right to show, that after the transaction, he took the proper measures to have the party guilty of these wrongs arrested and punished; for *non constat* he was not informed of these outrages until after they occurred and after the prisoners were released.

Senator GILMER. I cannot, Mr. Chief Justice, see how the testimony offered differs from that which was excluded the other day by the court. With great respect to the opinion of the presiding officer I feel it my duty to call for a decision of the question by the senate.

A sufficient number seconded the call.

Mr. SMITH. Before taking the vote I would like to have the senate understand our view. The presiding officer has admitted a question on this ground, that there being no evi-

dence that the governor had heard of this maltreatment until after the prisoners were discharged it is competent.

Mr. MERRIMON. Mr. Chief Justice, I do not understand you as saying that there was any evidence of that fact. I understand the case to be this: these parties had been arrested by Burgen and Kirk under the order of the executive; they had been delivered to the United States and the state courts and had been discharged. Then the governor ordered Burgen to be arrested for these offences. The point now to be decided is whether that fact may be proved.

The CHIEF JUSTICE. In the absence of proof bringing home to the respondent at an earlier a day a knowledge of the fact—that is the manner in which the question is qualified.

Mr. BRAGG. We say there is proof here that the respondent had knowledge. There is proof by a man who was here and examined by officers of the governor at his instance who had been hanged, and who stated that he had fainted under the operation. Boyd was here, and he had been examined also upon the same point, although it has not yet appeared what he said. The respondent has introduced a paper here, which was drawn up by Colonel Clarke and signed by Patten in which he told the whole matter in the office of the governor. I say, therefore, these facts must have been known to the governor.

The CHIEF JUSTICE. The presiding officers thinks the counsel is mistaken. The paper which Patten signed did not make any statement in reference to his having been hung. It had reference to his joining the secret organization. If there is any doubt about it the paper can be produced.

Mr. BRAGG. Perhaps I am wrong. But, sir, it is a matter of public history which a court, such as this, will take notice of as evidence that the defendant must have been aware of the fact that these men were hung about the 30th or 31st July. The whole country was flooded with statements of the fact, and it was a matter af public notoriety. The fact of these outrages were contained in the affidavits upon which the writs of *habeas*

corpus were based, and the respondent had counsel to appear in his behalf in those proceedings. It does seem to me, therefore, there can be no claim that the respondent did not have full and ample notice.

Mr. McCORKLE. It is apparent that this question tends to show, not what occurred after the arrest, but the outrages that were committed betore; and it would be competent in this point of view as a circumstance showing whether the governor had any knowledge of these acts up to the time of their commission and that he arrested these men as soon as he heard of the facts. It would be a circumstance to weight with the court whether or not he had knowledge. The gentleman on the other side says that the governor must have had knowledge and that it was a matter of public history and known to everybody. We have had no evidence yet that it was a matter of history and certainly not to such an extent as to raise the presumption that the governor was informed.

Senator GILMER. Perhaps I have misunderstood the view on which the evidence is offered. If it is offered as the last gentleman says, to contradict the allegation of the *scienter*, on the part of the respondent, if the court thinks it is competent for that purpose I withdraw my motion.

Mr. GRAHAM. Mr. Chief Justice, while I do not profess to have much skill or knowledge in criminal trials, I think I can satisfy any juror that the *scienter* existed. The commander-in-chief was within a few hours' travel of his army, where occurrences took place of a character to attract the notice and awaken feelings of abhorrence among the people during the first days of August; and twenty-two days thereafter intervened before the respondent ordered the arrest of Burgen; and nearly twenty days passed before the prisoners were discharged. Will it be claimed that the fact of these outrages had not come to the governar's knowledge long before the 22d day of August? In the meantime Patten had been here and other witnesses had been here from the camp of the commander-in-chief; and if he exercised the power of a commander-in-chief the fact must have

been known to him. The knowledge of these facts is a presumption arising out of the nature of military operations.

Mr. SMITH. Mr. Chief Justice, I think my friend has conceded the whole point when he thinks he can convince the jury of the existence of a previous knowledge by the respondent. What we claim is that that is one of the questions which is to be passed upon by this court, and thus far nothing except indirect evidence has been given. On the question of the existence of a previous knowledge we will meet him at Phillipi; but we do not desire to cut off one proofs and deprive us of the right of going to the jury upon it.

The CHIEF JUSTICE. The senator having withdrawn his motion for a decision of the question of the admissibility of the proof by the senate the question may be asked.

Senator JONES. Mr. Chief Justice, I move that the question be disallowed. The facts sought to be proved being equally consistent with the knowledge or want of knowledge by the respondent, it cannot bear upon the question of *scienter* at all.

Senator EDWARDS. Mr. Chief Justice, as I understand the question it is this: shall the governor be allowed to give in evidence an order to his subordinates made after the liberation of the prisoners to show what were his instructions before they were put in prison.

Re-Direct Examination.

The CHIEF JUSTICE. The question has reference to admitting proof of the arrest of Burgen.

Senator EDWARDS. That is, after the prisoners have been discharged from custody shall he be allowed to give evidence of his orders to his subordinates as affecting his instructions to those subordinates before the liberation.

Senator MOORE. Mr. Chief Justice, I rise to a question of order. The motion is not debateable except by consent of the senate.

Senator EDWARDS. I am not debating—I am making an inquiry to see if I understand the question.

Senator MOORE. Mr. Chief Justice, I insist upon my point of order. I think the senator is discussing the question. I think the senate understands the question well enough.

Senator EDWARDS. The senate may understand the question but the senator does not.

The CHIEF JUSTICE. There is a difference between making an inquiry and arguing a question. It seems to me that the senator from Granville is arguing it.

Senator EDWARDS. With all respect to the presiding officer, I am not arguing the question. I say that if I understand the question it is this: shall the respondent be allowed to give in evidence an order after the liberation of the prisoners to show his purpose before they were liberated?

The CHIEF JUSTICE. The clerk will read the order offered in evidence for the information of the senate.

The CLERK proceeded to read the order of the governor for Burgen to be placed under arrest from the order book of the adjutant general.

The CHIEF JUSTICE. The question before the court is whether that order shall be read in evidence. The presiding officer decided that it could be read in evidence, on the ground that no legal evidence has yet been offered that fixes on the governor a knowledge of the transactions which have been stated. The fact that they were a matter of notoriety is not evidence, while they may have been notorious to everybody else still the governor may not have been informed, and it is incumbent on the managers to show the existence of that knowledge.

Mr. CONIGLAND. I hope, Mr. Chief Justice, I will be excused if I make a remark at this stage of the discussion. I have not fully caught the question which is pending before the court, but as I understand it, it is this: we ask to be allowed to show that this respondent ordered the arrest of Burgen. That is objected to. It occurs to me that the principle of natural justice which should warm every man's bosom would prompt the admission of this evidence. I am surprised that it should be objected to. What has been the course of evidence

on the other side? The respondent is held up as a monster of iniquity and the statement has been made that he has connived at the most atrocious acts and all sorts of evidence has been given to sustain that view. The very moment we propose to meet the allegations by proof which tends to show that he knew nothing of those acts, our proof is objected to. Sir, this is not a jury, it is a body composed of intelligent men many of whom are lawyers and who cannot be affected or influenced by incompetent testimony one way or the other. Sir, I am surprised that the objection should be interposed.

Senator JONES. Mr. Chief Justice, I insist upon my motion.

The CLERK proceeded to call the roll of senators on the admission of the question propounded by the counsel for the respondent and it was decided in the negative by the following vote.

Those who voted in the affirmative were:

Messrs. Allen, Barnett, Bellamy, Brogden, Cowles, Flemming, Gilmer, Hawkins, Hyman, King, Ledbetter, Love, McCotter, Moore, Murphy, Olds, Price, Robbins, of Rowan, Speed—19

Those who voted in the negative were:

Messrs. Adams, Albright, Battle, Brown, Cook, Currie, Dargan, Edwards, Graham, of Alamance, Graham, of Orange, Jones, Latham, Linney, Mauney, McClammy, Merrimon, Morehead, Norment, Robbins, of Davidson, Skinner, Troy, Waddell, Warren, Whiteside and Worth—25.

Mr. SMITH. We suppose. Mr. Chief Justice, that that ruling of the court includes proof of the order of arrest.

The CHIEF JUSTICE. The same principle will apply.

Re-Direct Examination.

By Mr. MERRIMON.

Q. Did I understand you to say that you reduced to writing all the orders the governor gave you? A. All special orders.

Q. All orders which he directed you to communicate to the troops you reduced to writing, and put them in that book? A. Yes, sir, if I understand your question.

Q. I ask you if you reduced to writing all orders that the governor gave you as adjutant general to communicate to the troops and entered them on this order book? A. All special orders I did. A question has been asked me about general instructions. Of course general instructions are not put in the book.

Q. Did he give you any order or message to send to the army that you did not put in that book? A. I think not.

The hour of 2:45 having arrived the court adjourned to meet to-morrow at 11 o'clock a. m.

TWENTIETH DAY.

SENATE CHAMBER, February 18, 1871.

The COURT met at eleven o'clock, pursuant to adjournme Hon. R. M. Pearson, Chief Justice of the Supreme Court, in t chair.

The proceedings were opened by proclamation made in d form by the doorkeeper.

The CLERK proceeded to call the roll of senators when t following gentlemen were found to be present.

Messrs. Adams, Albright, Barnett, Battle Bellamy, Brogle Brown, Cook, Council, Cowles, Currie. Edwards, Flemmin Gilmer, Graham, of Alamance, Hyman, Jones, King, Latha Linney, Love, Mauney, McClammy, McCotter, Merrim Moore, Murphy, Norment, Olds, Price, Robbins, of Davids Robbins, of Rowan, Skinner, Speed, Troy, Waddell, Warr Whiteside, Worth—44.

Senator GRAHAM, of Alamance, moved to dispense wi the reading of the journal of the proceedings of yesterday.

The CHIEF JUSTICE put the question on the motion Senator Graham, of Alamance, and it was decided in the affir ative.

THEODORE N. RAMSEY, *a witness on behalf of t Managers, being duly sworn, testified as follows:*

By Mr. MERRIMON.

Q. State to the court your name, age, place of business a business? A. Theodore N. Ramsey, born in the city of Raleig My business is that of clerk at the *Sentinel* office.

Q. Look upon the book now produced and state what it [a bound newspaper file handed to the witness]? A. Th is the Raleigh *Sentinel* for the year 1870, from January 1st July 1st.

Q. What is this [producing an unbound newspaper file

the witness]. A. This is the Raleigh *Sentinel* from July 1st 1870, to January 1st 1871.

Q. Where is that paper published? A. In the city of Raleigh.

Q. How often is it published? A. Daily.

Q. Does that paper circulate in this city? A. Yes, sir.

Q. Do you know whether it went to the executive office during the year 1870? A. I do not know. It went to the clerk of the executive office, Mr. Horner. It was sent to him.

Q. Is he the private secretary of the governor? A. He is the principal clerk in the executive office.

Cross-Examination.

By Mr. McCorkle.

Q. Does this paper circulate extensively in Caswell and Alamance counties? A. Yes, sir, very extensively.

Mr. MERRIMON. Mr. Chief Justice we offer to put in evidence the proceedings of a meeting held in the county of Alamance on the 8th day of January and published in the *Sentinel* of the 12th day of January. Before proceeding to read from the book I offer in evidence the original of the Shoffner bill as then certified by the clerk.

Mr. SMITH. I do not see, Mr. Chief Justice, what the interior proceedings of the two branches of the general assembly have to do with the questions in trial.

Mr. MERRIMON. We offer to show the ground work or the principal cause of the opposition to Mr. Shoffner in the county of Alamance. The effort on the part of the respondent has been to show that Mr. Shoffner was assailed and driven from the county because of his political associations and his opposition to the Kuklux. We offer to show as the ground work of the opposition to him the original draft of the bill, not as it passed, but as it was introduced, and to show that the provisions contained in it were of such a character as to be especially offensive to the people, and that the introduction of the bill gave rise to a meeting of the citizens of Alamance county, the proceedings of which we propose to put in evidence.

Mr. McCORKLE. Mr. Chief Justice, I do not see in what point of view the document offered is competent evidence. The senate and house keep regular journals of their proceedings. Whenever a bill is offered by any one there is a record showing who offered it, and no other evidence is competent upon that point. The proposition, as I take it, is to show that Mr. Shoffner was the author of the bill, and being so, he was personally offensive to the citizens of Alamance county. The highest evidence of his being the author of the bill would be the records of the senate.

Mr. GRAHAM. Mr. Chief Justice, this is the record of the senate which we now offer. A bill is introduced, the clerk endorses upon it the day of its introduction, by whom introduced, whether it passes its first, second or third readings. This is that paper with the endorsement of the clerk upon it, showing that it was introduced on the 16th of December, and that it passed its first, second and third readings that day. The bill then went to the other house, and was finally passed sometime in January. We wish to show that while it was pending a meeting took place in the county of Alamance, not only expressing opinions on these subjects, but expressing opposition to unlawful violence, and declaring that military bills were unnessary because the civil officers were able to perform their duties.

The CHIEF JUSTICE. The paper may be read.

The CLERK proceeded to read the bill in the words following:

An act to secure the better protection of life and property.

The general assembly of North Carolina do enact:

SEC. 1. That the governor is hereby authorized and empowered, whenever in his judgment the civil authorities in any county are unable to protect its citizens in the enjoyment of life and property, to declare such county to be in a state of insurrection and to call into active service the militia of the state to such an extent as may become necessary to suppress such insurrection.

SEC. 2. That the governor is hereby authorized and empowered to request the president of the United States to suspend the writ of *habeas corpus* in any county or counties declared under authority of this act to be in a state of insurrection and to afford such assistance as in his judgment may be necessary to enforce obedience to law.

SEC. 3. That upon motion of the solicitor of a district, it shall be the duty of the judge thereof to remove the trial of any person indicted in any county in the state for murder, conspiracy or violation of an act entitled an "Act making the act of going masked, disguised or painted, a felony," ratified the twelfth day of April, A. D. 1869, from the county in which such offence may have been committed to such other county as the solicitor may designate.

SEC. 4. That the expenses attending the calling of the militia into active service as herein provided shall be paid by the treasurer of the state upon the warrant of the governor, and it shall be the duty of the commissioners of the county declared to be in a state of insurrection and in which such service was rendered, to reimburse within one year the treasury of the state the expenses thus paid: provided, that whenever a person or persons shall be convicted of a violation of the act mentioned in section three of this act, said expenses of the militia shall be taxed in the bill of costs against the person or persons convicted, and when collected the same shall be paid into the treasury of such county.

SEC. 5. That all laws or clauses of laws in conflict with this act are hereby repealed.

SEC. 6. That this act shall be in force on and after its ratification.

Received, read and passed 1st reading Dec. 16th, 1869.

T. A. BYRNES, Secretary.

Passed 2d and 3rd readings, Dec. 16th, 1869.

T. A. BYRNES, Secretary Senate.

Mr. MERRIMON. We now offer to read the proceeding

of the meeting in the county of Alamance as published in the *Sentinel*.

Mr. SMITH. Mr. Chief Justice, I submit that is not the way to prove what transpired at the meeting. It is a simple declaration not under oath as to what the proceedings were.

Mr. MERRIMON. One averment contained in the answer of the respondent is that the people of the county took no notice and made no effort to frown down the alleged outrages, and we offer this report as evidence to rebut what is averred in the answer in that respect. This is a public announcement and we are prepared to show that a large number of the people of Alamance were there and that these resolutions were passed without a dissenting voice.

Mr. SMITH. That is not our objection. We have not objected to the fact, but say that the paper is not evidence of the fact.

Mr. MERRIMON. We will supply the proof.

ALEXANDER C. McALLISTER, *a witness on behalf of the Managers, being re-called, testified as follows:*

By Mr. MERRIMON.

Q. State whether there was any public meeting held in the county of Alamance during the month of January, 1870, and if so when it was? A. There was a public meeting I think in the early part of January during the christmas recess of the session of 1869–'70. It was largely attended. The court house was pretty well filled, the room being somewhat larger than this.

Q. Who presided? A. Jesse Gant as, I recollect.

Q. Do you know who were secretaries? A. I do not.

Q. If you were to hear the proceedings read would you be able to state what transpired? A. I read them as they were reported in the *Sentinel* shortly after the meeting and my impression at the time was that the proceedings were correctly reported.

Cross-Examination.

By Mr. SMITH:

Q. Can you recollect what resolutions were passed? A. No, sir, I cannot, but I recollect that my impression was that the report as published in the *Sentinel* very soon after the meeting was held, was correct.

Q. You heard the resolutions read when they were passed by the meeting? A. Yes, sir.

Q. And you saw them afterwards in the *Sentinel*, and your recollection is that they were the same? A. Yes, sir, I could not say the exact words, but that was my impression, that the proceedings of the meeting were correctly reported.

The CLERK proceeded to read the proceedings of the meeting in the words following:

For the Sentinel.

MEETING IN ALAMANCE.

A meeting of the citizens of Alamance county was held at the court house in Graham, on the 8th of January, 1870, to express their views in regard to the state of the country.

The meeting was organized by calling to the chair, Jessee Gant, Esq., and requesting Messrs. J. A. Long and J. L. Scott to act as secretaries.

The chairman explained the object of the meeting and appointed the following committee to draft resolutions expressive of the object of the convention, viz., Messrs. J. E. Boyd, J. A. Graham, Joseph B. McMurray, Alvis King, Thomas Foust, Freeman Louth, Alfred Gleg, John Ireland and Bennett Haizell.

While the committee were out, Dr. J. A. Moore, our worthy representative in the Legislature, being loudly called for, entertained the meeting in his usual eloquent style, showing by facts and figures our liabilities as a state, and also the bad results incident to, and growing out of the "Shoffner bill" should it become a law.

The committee then made the following report which, on motion, was *unanimously* adopted:

Resolved, 1. That the masses of the people are the sovereigns of this land, and that they have the right to meet together and

consult as to such measures as they may deem of interest to the common country.

2. That the time seems to have arrived when it becomes all good citizens of North Carolina to unite to save the state from bankruptcy and ruin and bring about that state of harmony, prosperity and peace, which the country so much needs.

3. That the representatives in the legislature of the country are the servants and not the masters of the people, and should work for the good of the people and not to enrich themselves by corrupting the government and oppressing the people.

4. That in our opinion the terms of the present members of the legislature of this state cease on the 1st Thursday in August, 1870, and that the people voted for them for that period; and that any resolution or act of theirs by which they determine to hold over for four years will be a plain usurpation of power which was not granted to them by the people, and in utter disregard of their trusts as public officers.

5. That we are the friends of peace and good order and the enemies of lawlessness and violence, and that we wish to see every man secured in the unmolested enjoyment of all his his civil and political rights.

6. That the officers of the law have not been disturbed in the execution of their duties; that peace and good order has generally prevailed and we believe the courts of justice and the peace officers to be fully competent to maintain the laws of the country.

7. That we look upon the military bill lately introduced into our legislature as a measure which perpetrates a greater wrong than the one it is intended to prevent; that because of the misbehavior of a few it is no reason that the lives and property of all should be hazarded, that a military despotism should be inaugurated, the great writ of *habeas corpus* suspended, and the liberty of the people destroyed. That the introduction and entertainment of such a bill shows an ignorance of the first principles of free government and a malignant desire to promote controversy by exciting strife among the people and to shed the blood of war in time of peace.

8. What we demand that the alleged frauds in the management of our State bonds, railroad affairs, &c., should be rigidly investigated, and if such frauds have been committed, the guilty parties brought speedily to such punishment as they deserve.

9. What we are in favor of and demand that the taxes levied and collected for the purposes of education in the state be applied for that purpose and no other, and that we are bitterly opposed to depriving the poor children of this state of education in order to pay legislators $7 per day to ruin the people.

10. That universal suffrage is a dead issue, and that the colored man is secure in all the privileges which he now enjoys is a fact settled beyond all controversy, and we demand as a matter of justice and right, that the political disabilities which have been imposed, be removed from every man in the country and we respectfully ask congress to pass a law to this effect.

11th. That these resolutions be sent to the *Sentinel* for publication, and that the Hillsboro' *Recorder*, Greensboro' *Patriot.* and other papers in the state interested in its welfare requested to copy.

After the adoption of the above resolutions Messrs. J. E. Boyd and J. A. Graham addressed the audience at length in able and patriotic speeches.

Col. W. A. Albright and G. A. Freeland, Esq, being called excused themselves by making a few remarks.

J. E. Boyd, Esq., offered the following resolution which was adopted:

Resolved, That the thanks of this meeting is due, and is hereby tendered to the chairman and secretaries for the manner in which they have discharged their duties.

On motion of J. E. Boyd, Esq., the meeting adjourned.

JESSE GANT,
Chairman.

J. A. LONG,
J. L. SCOTT,
Secretaries.

ALEXANDER C. McALLISTER, *a witness called on behalf of the Managers, being re-called testified as follows :*

Re-Direct Examination.

By Mr. MERRIMON.

Q. State to the court whether it was proposed at any time to hold another meeting in Alamance county, and if so, whether it was held or not, and if not, state why it was not held if you know? A. Very soon after the death of Outlaw it was proposed to hold a public meeting condemning the act. I was absent when the paper making the call was brought to my place.

Mr. SMITH. You need not state anything that occurred during your absence.

The WITNESS. It was understood that a meeting was called for that purpose.

Q. Was it a notorious fact there? A. Yes, sir.

Q. Was the day and week of the meeting fixed upon? A. It was to meet on Saturday after the occurrence of the hanging of Outlaw. On Thursday the federal troops arrived at Graham. I did not attend the meeting on account of the troops being there.

Q. Do you know whether the meeting was held ? A. I understand not

Q. Do you know of any reason why it was not held ? A. It was pretty well attended——

Q. Only state what you know and not what you heard ? A. I know nothing, as I did not attend. I did not go to Graham on that day myself.

Q. Why didn't you go? A. On account of the troops being brought there. Any action taken in the matter I wanted to appear to be free and voluntary, and not as taking place at the point of the bayonet.

Q. Was that the general impression throughout the country there? A. I understand it was, from general report.

Q, That is exactly what we want? A. It was understood that the people assembled in pretty large numbers.

Q. [By Mr. Smith.] Were you present. A. No, sir.

Mr. SMITH. Then you should not state that.

Q. Did you talk to many people who were there? A. Yes, sir.

Q. What was the common understanding? A. That after going to Graham and finding a military force there, they declined going into the meeting.

Re-Cross Examination.

By Mr. Smith.

Q. Is it not a matter of public notoriety that a great many outrages have been committed in that county? A. Yes, sir.

Q. You have heard of numbers of them, not only murders, but whippings? A. Not as many known in the county as have been published.

Q. But there are a great many which are known and understood to have occurred. A. Yes, sir.

Q. Was there ever any public meeting to discountenance and discourage those outrages previous to the meeeting occasioned by the Shoffner bill? A. No, sir.

Q. You know of no resolution being passed except those at the meeting called in reference to the Shoffner bill? A. No, sir.

Q. After the murder of Outlaw there was a motion in that direction, and you say you heard it said that the meeting was not held because the military was there? A. Yes, sir.

Q. Do you mean the United States troops? A. Yes, sir.

Q. You do not mean the military of the State? A. No sir.

Q. Was it not the purpose of those who called the meeting to prevent the troops from coming there, and did not their arrival frustrate the object of the meeting? A. I think that was not the object, although I heard one of the parties interested in getting up the meeting, state that the troops would not be brought.

Q. Provided the meeting was held? A. Probably.

Q. Then the demonstration was made under the supposition that the troops would not be sent, and the troops having arrived

the meeting was not held. You do not mean to say that the troops interfered with the hol ding of the meeting in any way? A. No sir. I don't think the object of the meeting was to prevent the coming of the troops. I think the purpose was to get up a meeting for the purpose of discussing the matter and it was understood that if there was such a demonstration the troops would not be brought.

Q. Was not the purpose of the meeting to remove the necessity or pretext of sending troops there by showing a popular sentiment in opposition to these outrages? A. I think not, the murder was a shock to the community generally.

Q. The meeting was to condemn that deed? A. Yes, sir, and try to control lawless acts by public sentiment.

Q. Was any attempt made by the military to prevent the meeting? A. No, sir.

Q. Why was it not held when the military came to assist the civil authorities—what prevented the meeting from being held? A. I cannot say.

Q. You say these was federal troops? A. Yes, sir.

Q. And they never interfered with the civil authorities at all? A. No, sir.

Q. Nor anybody? A. No, sir, they behaved themselves well.

Q. Why did not the people co-operate with the federal authorities by taking some steps to ascertain who were the authors of this crime and bring them to punishment? A. I was not at Graham and can only speak of my own feelings. I did not attend the meeting on account of the troops being there.

Q. Were these outrages not a matter of public notoriety for twelve months previous to that first meeting which was held in January in reference to the Shoffner bill? A. I do not know. I cannot recollect the dates when it was reported that the first whipping took place.

Q. Did not these outrages spread over an interval of years preceding the meeting in reference to the Shoffner bill? A. I think that some time before there had been some reports of

whippings but I cannot recollect the time. The first one in our neighborhood was that of Harvey, but I do not recollect the date.

Q. Was the killing of Outlaw before or after the passage of these resolutions which have been read? A. After it.

Q. Has there been within your knowledge any punishment inflicted for any of these secret outrages in your county by the courts? A. None except in the case of these colored men.

Q. What colored men? A. Those who are now confined in the penitentiary.

Q. That is the only instance you have known? A. I have heard of trials but no case of conviction.

Q. No body has been punished for any of these excesses there, except these three colored men? A. No body.

Q. They were all tried for committing one act? A. Yes, sir.

Q. How many cases of whipping have been bruited about the county of Alamance? A. I do not know as I could state the number. I don't think there is a dozen.

Q. Were there as many as a dozen which occurred, as a matter of general report?

Mr. GRAHAM. Confine your answer to before this meeting.

A. I could not say, I think I could name a dozen from general report, probably most of them occurring before that meeting.

Q. Have there not been comparatively few since the passage of the Shoffner bill? A. Yes, sir, very few.

Q. There has been no punishment in any of the dozen instances of which you have been notified by public rumor, except the three men who were charged with whipping one person? A. None that I have heard.

Q. What class of people were in that meeting called in reference to the Shoffner bill? A. My recollection is that the meeting was called of citizens without regard to party. Mr. William A. Albright who was considered the leader of the

republican party there, made a few remarks excusing himself from making a regular speech. He was called upon and he made a few remarks.

Q. (By Mr. Graham). He was clerk of the court? A. Yes, sir.

Q. Anybody else you know? A. I do not recollect. I think there were three republicans in the meeting.

Q. Do you not recollect that the resolutions were strong party resolutions? Do you mean to say that the opposite party participated in the passage of these resolutions? A. No, sir, I did not notice the vote at the time. I don't suppose that some of the resolutions expressed the sentiment of the opposite party.

Q. Were not a great bulk of those attending the meeting and especially those who drew the resolutions members of the conservative party? A. They were.

Q. They gave tone and character to what was done? A. Yes sir, I think they did.

Q. Do you know whether among the persons attending this meeting there were a few or many who were known to be members of these secret organizations? A. When the Kirk movement was commenced I did not know a man in the county who belonged to the organization.

Q. When you did find out who were the members of the Kuklux organization, did you not discover that many of them had been in that meeting and had participated in its proceedings? A. Yes, sir, some.

Q. You mean at the time of the meeting you did not know that there was a person in the meeting who was a member of the kuklux, but that since you have learned that some of the persons who participated in that meeting were said to be members of the kuklux? A. Yes, sir.

Q. How many of that class? A. I could not say, I don't recollect any persons who attended the meeting except those who were prominent in it.

Q. Was Mr. Long an officer of the meeting—Jacob Long?

A. I don't recollect seeing him and I don't recollect of him being secretary, but I see from the proceedings that he was.

Q. These published proceedings are a correct account of the meeting? A. Yes, sir.

Q. After hearing these proceedings read is it not your recollection that he was secretary? A. When I read the account in the *Sentinel* my impression was that it was correctly reported.

Q. You have the same recollection about that as you have about other matters? A. Yes, sir.

Q. Was Doctor Moore present and did he participate in the meeting? A. Yes, sir, he addressed the meeting and also James E. Boyd.

Q. James E. Boyd was present and participated? A. Yes, sir.

Q. Were those members of the Kuklux organization? A. It so appears from the proceedings on the bench warrant cases.

Mr. GRAHAM. It seems to me, Mr. Chief Justice, the statement is inadmissible, the witness does not know anything in reference to that except what he has heard.

Q There were some present at that meeting whose names have since been published as members of that secret organization? A. Yes, sir.

Q. And whose testimony was taken here in the bench warrant cases. A. Yes, sir.

Re-Direct Examination.

By Mr. GRAHAM.

Q. You say at the first meeting you saw William A. Albright? A. Yes, sir.

Q. You said that he was the recognized leader of the republican party in that neighborhood? A. He is one of the most prominent members of the party.

Q. He approved the resolutions that were offered, or made no opposition to them? A. He made no opposition in the few remarks he made.

Q. You speak of party resolutions. Is there any resolution

in that whole series which it is understood the republican party as a party disapprove of, for example, the matter of ferreting out frauds—is it understood that the republican party sanctioned frauds? A. Some of these resolutions I consider a criticism on the action of the then existing legislature, and I do not suppose the other party would have taken part in them.

Q. Mr. Albright was there and made no opposition to the proposition to inquire how much public money had been stolen? A. No, sir, my recollection is that he made no opposition to any resolution.

Q. Did he make any opposition to declaring that the assembly ought not to hold over more than two years? A. No, sir.

Q. He agreed that they ought not to hold over? A. I do not know that he referred to the resolutions particularly, but he made no opposition himself.

Q. He expressed no opposition to any one resolution in the series? A. Not that I recollect.

Q. And excused himself for not making a speech at length, but answered when his name was called in the meeting? A. Yes, sir.

Q. You have been asked in regard to men who have since been discovered to belong to the Kuklux organization. Was it known to you or to the meeting that any of those men belonged to such an organization at that time? A. It was not known to me, and I suppose it was not known to the meeting.

Q. Was it known to you that either of them belonged to the Kuklux at that time. A. No, sir.

Q. You had no suspicion of either of them? A. No, sir. Mr. Boyd and Senator Graham in their speeches, I think, condemned lawlessness.

Q. So far as you knew at that time there was no men present who belonged to any secret organization of any kind? A. None.

Q. Was or not the meeting held for the purpose of express-

ing public sentiment on the subjects embraced in the resolutions? A. Yes, sir, I think so.

Q. In relation to this other meeting you say that the death of Outlaw caused a shock in the community, and a meeting was called to assemble on the next Saturday. Do you know whether information was sent all through the county, with a view of having all sections present? A. It was advertised that the meeting was called.

Q. In the meantime the federal troops arrived, and you and others declined to go to the meeting because of the troops having been sent there; you didn't choose to go to a public meeting to express the sentiments of the community where bayonets were very near the door of the court house? A. That was my feeling in regard to it, and I understood that those who assembled declined to hold the meeting on that account.

Q. You have stated in reply to one of the questions put to you that there were a great many whippings, perhaps as many as a dozen had taken place in the county. Did you hear of any one whipping that proceeded from a political cause? A. I did not.

Q. Did some of these men who are alleged to have been whipped vote the conservative ticket?

Mr. SMITH. You will state from your own knowledge.

Mr. GRAHAM. The counsel have drawn out the fact of a rumor that a certain number of individuals had been whipped, I wish to know if among them there were persons who were reputed to be conservative men? A. I think I heard that the superintendent of the Carolina mills was a conservative, but I am not positive.

Q. What is his name? A. I could give his name if I had time to reflect.

Q. You have heard of no political cause assigned for the whipping of these people? A. No, sir.

Q. What were the whippings said to be for? A. Insults to white women.

Q. Anything else? A. Thieving.

Q. What else? A. In the case of the superintendent of the

Carolina mills it was said the reason was because he had d serted his wife and taken up with the wife of another man.

Q. [By Mr. Smith.] That was one case of whipping? A So reported.

Q. Others you say were for thieving or insulting whi women? A. And one case of the maltreatment of a family.

Q. Do you know of any other offenses imputed? A. The ca of Rippey was the case of a man caught away from home in be with a colored woman.

Q. Do you know of any other instances of a man bein whipped anterior to this meeting, where the report was accon panied by a statement that the whipping was for some vic crime or insult? A. I don't recollect whether these particul cases were before or after the meeting.

Q. What was the name of the conservative who was whipped A. I stated that my impression is that he was a conservative.

Q. You don't know his name? A. I know his name bu cannot think of it. My impression is that I have heard h was a conservative.

Q. [By Mr. Merrimon.] Was not the name of this white mar the superintendent of the factory who was whipped, Siddle A. Yes, sir. It was said that he had a wife in the wester part of the state. I am not sure whether he was charged wit desertion, but he was absent from his wife and I understan he was whipped for taking up with the wife of another mar

Mr. Manager SPARROW. We now offer in evidenc the telegrams which were produced yesterday by the telegrap operator from Hillsboro', and first that of July 10th, 1870.

Mr. SMITH. These telegrams were objected to yesterda but we withdraw our objection.

Mr. Manager SPARROW read the telegrams in the word following:

HILLSBORO, July 10, 1870.

To Gov. HOLDEN, Raleigh, N. C.:

I am on my way by freight—great importance to state an gen'l gov't.

BERGEN.

HILLSBORO, Aug. 5th, 1870.

To L't COL. BURGEN, Co. Shops, N. C.:

I will be back to see you in a few days but cannot tell you without disobeying orders, come and see me.

ROB'T HANCOCK, JR.
Cap't Co. "A." 1st reg't N. C. S. T.

HILLSBER 5th, 1870.

To COL. BURGEN, Co. Shops, N. C.

I hav arreted Mr. Turner and hav him bfor the Bayont send an extera train afor me.

J. W. HENYCUTT, L't. Com.

SHOPS 5.

M. N. HUNYCUTT:

Come upon freight. If any one attempts to release Turner shoot him on the spot.

BURGEN.

Mr. McCORKLE. The counsel had perhaps better read the others now, as they put them all in evidence.

Mr. GRAHAM. The counsel is mistaken. The telegrams were filed with the clerk in order that the counsel might examine them, and then introduce them if they saw proper.

The CHIEF JUSTICE. It was understood that the telegrams might be offered if the counsel desired.

Mr. SMITH. Then we will read them now.

Senator GRAHAM. Mr. Chief Justice, I dislike to criticise the course of proceeding, but it seems to me it is irregular. I should prefer that the telegrams come in when the respondent has opened his case. It seems to me that course would be more regular.

Mr. SMITH. I will suggest to the Senator that the introduction of the telegrams by us now is really a part of the cross-examination of the witness who produced the dispatches.

The CHIEF JUSTICE. The presiding officer cannot con-

trol the course of counsel on the trial with respect to the manner of introducing their proof.

Mr. GRAHAM. I would suggest further, Mr. Chief Justice, that the telegrams have no relevancy to the cross examination. We produced the witness who brought the telegrams, and if the gentleman proposes to offer them, the proper way would be to do so after they have opened their case. If they propose to offer them now, I would like to know what they suppose the telegrams are competent to prove.

The CHIEF JUSTICE. The court can only judge of their admissibility by hearing the telegrams read.

Mr. GRAHAM. But we are entitled to have the counsel state the ground upon which they offer them to see whether they are proper to be read.

Mr. SMITH. I really thought that the counsel offered them all in evidence. They were brought here by their witness yesterday, and the only point made was whether they being copies were competent, or whether the originals must be produced. I never supposed they were to select a few, and attempt to exclude the other telegrams between these military officers and the governor and others.

Mr. Manager SPARROW. Our understanding of the matter was this; we put upon the stand the telegraph operator from Hillsboro, who had in his possession certain telegrams. Objection was made to their introduction, but the presiding officer said they could be left with the clerk, and that either side could look at them and introduce such as they thought proper. We avail ourselves of the privilege, and introduce four of these telegrams as pertinent to the issue. The others as we conceive have no pertinency at all, and being irrelevant we do not see fit to introduce them; and, upon that ground, we think they are not competent to be put in evidence. They are irrelevant. I can see no reason why they should be introduced by way of cross-examination.

Mr. SMITH. I withdrew my objection to their introduc-

tion when they were offered this morning, supposing that they were all in evidence.

Mr. BRAGG. Mr. Chief Justice, there is nothing clearer than that where a party summons a witness to produce a paper the fact of summoning him does not necessarily put the paper in evidence. He is required to produce the paper, and to file it in order that counsel may see as to its relevancy. I do not conceive that what has been done with reference to these telegrams puts them in evidence unless they are offered in behalf of the managers or in behalf of the respondent. They were simply produced for inspection, the operator declining in the first instance to furnish them, and only doing so under the order of the court compelling him. I do not understand how they can come in by way of cross-examination. The proper way it seems to me is for the respondent to introduce them when he comes to his defence.

The CHIEF JUSTICE. The presiding officer was not under the impression that the telegrams were made evidence by the action of the managers. The presiding officer decided that, in the administration of justice, it was in the power of the court to compel the production of this correspondence. He desired to infringe the rights of the telegraph company as little as possible, and suggested, therefore, that the telegrams could be filed and examined, and each side could take out what they wanted and have them read in evidence. They are in possession of the court, and can be introduced at any time counsel think fit.

Mr. GRAHAM. I desire to call the attention of the chief justice to this consideration. Any of these telegrams that relate to these which we have given in evidence are competent to be offered at any time; but we conceive that none of these which are proposed to be offered by the respondent are admissible, because they are the declarations of the respondent or those under him. Hence the point does not arise now.

The CHIEF JUSTICE. The presiding officer will hold that the counsel are restricted at this stage to those telegrams

that seem to be connected with those read. The others can be admitted afterwards.

Mr. McCORKLE. There are some of the telegrams, Mr. Chief Justice, which are explanatory of those read by the managers. For instance there is one as to the arrest of Mr. Turner. There are others that we propose to read explanatory of the conduct of the governor, and of the animus of Mr. Turner towards the governor made about the time of the arrest.

Mr. GRAHAM. But we submit you cannot prove Mr. Turner's animus by the declarations of the governor or his agent.

Mr. McCORKLE. We get the animus from Mr. Turner's own telegrams.

The CHIEF JUSTICE. The presiding officer is of the opinion that you have a right to offer the telegram which Mr. Turner sent.

Mr. BRAGG. I hope it will appear on the journals that the telegrams were offered by the respondent.

Mr. GRAHAM. Mr. Chief Justice, I do not think that the telegram should be allowed. They purport to be a despatch from the private secretary of the governor to Mr. Turner, in which some inquiry is made in reference to the circumstances of an outrage upon Mr. Turner's family. Mr. Turner replies to the governor. What light does such evidence afford in regard to the question of whether the arrest of Mr. Turner was or was not proper. Suppose Mr. Turner had offended the governor, there would be no justification for seizing him and putting him in a dungeon. It seems to me that the correspondence is a sort of badinage outside of this inquiry, based upon a charge of the unlawful arrest of Mr. Turner by the accused.

Mr. MERRIMON. Upon further consultation the managers have concluded to withdraw their objection, and to allow the telegrams to be read.

Mr. GRAHAM. I hope it will appear that this evidence was offered on the part of the defence.

The CLERK proceeded to read the telegrams in the words following:

RALEIGH, 15.

Hon. JOSIAH TURNER:

I send up a guard of twenty men by first train. Commanding officer will report to you. Arrest every suspicious person and I will deal with them. Keep me informed.

WM. J. CLARKE,
Col. 1st N. C. State Troops.

RALEIGH, 16, 1870,

JOSIAH TURNER, Jr.:

Please give me such information as you may have in regard to attempted outrage on Mrs. Turner.

W. R. RICHARDSON,
Private Sec'ty.

HILLSBORO', N. C., 16, 186.

To Governor HOLDEN, Raleigh:

The telegram of your private secretary asking the particulars of acts of violence committed on my family in my absence has been received. I see no necessity for taxing the state to pay for such information. The parties are unknown. John Ledbetter, the negro you pardoned out of the penitentiary has been seen in my vicinity. Dennis Hanes for whom the sheriff has a special capias was seen near the night after the firing into my house, he is the negro twice convicted for larceny and the verdict twice set aside by Judge Tourgee. I informed Col. Clarke that the civil law was ample in Orange for my protection and if his militia dared put foot on my land I would have them arrested for forcible trespass. I will give you further particulars by letter through the *Sentinel*.

JOSIAH TURNER, JR.

Mr. MERRIMON. We now offer in evidence certain num-

bers of the Raleigh *Sentinel*, which it was shown yesterday was received at the executive office containing printed statements of the outrages perpetrated in the counties of Alamance and Caswell, as affording additional proof that the respondent was aware of what was transpiring there.

Mr. SMITH. We object to the evidence. Any reliable information which was conveyed to the governor in a form in which any reasonable man would act, is competent for the purpose of showing notice. But I submit whether it is the duty of a high executive officer of the state to act upon newspaper statements made not under oath and not even with a responsibility of a name attached to them. We contend that such notices would not authorize him to act officially in the matter at all.

Mr. MERRIMON. Mr. Chief Justice, they would at least put the accused upon an enquiry to know whether there was any ground for the statements or not, and especially where the statements are most pointed in reference to the alleged outrages.

Mr. McCORKLE. I suppose, Mr. Chief Justice, that if this evidence is introduced it is equally competent to produce the *Standard* newspaper to show that a large number of another class of outrages were perpetrated in those counties; and the question would then arise, would it be competent for the governor to act upon that kind of testimony. Certainly, if he would not be authorized in the one case to act officially, the statements in the other case would give him no authority. If any information is conveyed to the governor of a reliable character, it would be either a justification or no justification for his conduct, and if this evidence now offered is to be admitted to show that he was aware of the outrages committed against prisoners, it certainly would be equally competent to show that other newspapers contained evidences of outrages of a different character as a justification for his action. It strikes me, sir, that the testimony should not be admitted.

Mr. GRAHAM. Mr. Chief Justice, this evidence is admissible on the same principle that obtains in the case of a disso-

lution of a co-partnership. In a case of that kind a person interested in the affairs of the firm who is in the habit of reading the newspapers in which the dissolution is advertized, is presumed to have notice of the dissolution. But, sir, it is admissible upon far higher ground. A legislative body may institute proceedings on rumor against any of their members charged with infamous crimes, and sir, a military officer—a major general commanding a division of the army of the United States who is in the habit of daily reading that his men are committing outrage upon citizens of a county, if he take no notice of the fact, he would be cashiered if not shot, if it turns out that he had instituted no investigation after these things were called to his attention. He neglects an investigation at his peril. If he chooses to pass it by as idle rumor and information not to be relied upon, and it turns out that real oppression is practiced and he had power to prevent it, he is held responsible for all the consequences. This was the only military business this respondent had to do. It was outside of his regular duties; and he seems to have concentrated his whole energies upon it, and he looked upon the operations of Kirk with quite as much interest as General Grant looked at the operations of the army of the United States during the late war. His eyes were turned towards those two counties and no where else, and wherever it was alleged that the crime had been committed by this force as a matter of public notoriety, through the newspapers (which are a means of communication between people, invented within the last two or three centuries, and never known before) it is most convincing evidence that he was apprised of what was transpiring, and if he chose to underrate the magnitude of the crimes alleged, it is an aggravation of his offence.

Mr. SMITH. It seems to me, Mr. Chief Justice, to be a very extraordinary proposition that a man is to be held criminally liable in a proceeding calculated to degrade him beyond any other punishment upon a presumed knowledge obtained from publications in newspapers, especially in the present con-

dition of the country and party feeling. Under all circumstances such statements are more or less unreliable, being anonymous. If the matter was of sufficient importance why did not the editor convey to him a knowledge of the fact by letter? Why not have some responsible name annexed to these articles published, and in that way bring the facts to the knowledge of the respondent in a form that would justify the action of the executive? What evidence had he that these statements were true? What right had the governor, sitting as a grand jury, to accept every fact alleged in an ordinary newspaper? If he done that, what other function of his office could he have performed? As my associate has already said, if the executive is to take the files of the *Sentinel*, is it not equally incumbent upon him to take the files of the *Standard* and act upon every allegation of outrage reported there. I say that it is the duty of a high public officer to act upon information as to unlawful acts which come to him in a reliable form and which any reasonable man would regard under similar circumstances. I admit that whatever he does do should be upon the best information he could get. But they do not attempt here to show that he knew of the existence of these articles published. They charge him with knowledge and they only bring proof that somebody, in the executive office took this newspaper without the slightest evidence that the respondent ever read one of the articles. The case of a co-partnership which is cited by the learned counsel [Mr. Graham] as analogous to this, is not parallel at all. The managers undertake to charge the respondent with a knowledge of acts without a responsible name attached to statements and without any proof that he took the newspaper and much less that he read it, and to hold him responsible for non-action in the premises. For ought that to appear there? These outrages may have existed over the whole State. I do not suppose they were confined to Alamance county.

Mr. MERRIMON. The charges of outrage complained of in the articles were in those two counties.

Mr. SMITH. The enquiry is as to the culpability of the respondent for what he did in the counties of Alamance and Caswell. If he is culpable for not taking notice of any act or acts in those counties, then it must be shown that he was aware of those acts, and that he was guilty of non-action with that knowledge.

Mr. GRAHAM. Restricting this investigation to those two counties, and the case stands thus. It is proved by Murray and Patten and Rogers that they were hanged. There is no doubt about that. We propose to show that the governor is a reader of this newspaper and hence had information very early of these occurrences and that he took no steps to prevent any such things in the future.

The CHIEF JUSTICE. The presiding officer is of the opinion that the evidence is competent upon the ground of its being proved that the *Sentinel* was sent to the executive office every morning; and there is a fair presumption that the attention of the governor was called to it. Whether it was incumbent upon him to act upon information derived in that way, was a question for him to determine then and will be a question to be judged of by this court on its final action. But it is not now before them. The question here is simply one of evidence, and turns not upon its competency but upon its weight.

Mr. Manager SPARROW read from the Raleigh *Sentinel* of July 20th, an article in the words following:

KIRK'S WORK.

"The telegram and letter below, will show how Kirk and his "men are 'obeying orders' in Caswell. Their actions are so "calculated that we might be astonished at it if the time to be "astonished at anything had not passed. The telegram is dated

SALISBURY, July 20th, 1870.

MR. EDITOR:—On Monday Kirk arrested Judge Kerr, Dr. "Roan, Hon. S. P. Hill, J. C. Williamson, W. D. Bowe, Rob't. "Roan, Joseph Fowler, Mitchell and James Neill, Jesse

"Griffith, Dr. Yancey, Thomas Womack, James F. A. Wiley, "and D. Rainey. Some one hundred and fifty or two hun- "dred were arrested and detained in the court house from one "until five o'clock. W. D. Bowe demanded by what authority "they arrested him, unarmed, he refused to go and was struck "over the head with guns and dragged off."

Mr. SMITH. As I understand it, Mr. Chief Justice, the managers offer this newspaper article as evidence tending to show that notice of the fact stated was brought to the executive. In that view I don't suppose it proper to read the comments.

The CHIEF JUSTICE. The presiding officer understood that it was admitted as a statement in reference to the conduct of the soldiers.

Mr. BRAGG. I hope we may be understood, Mr. Chief Justice. Of course we do not offer anything contained in a newspaper as being proof that particular acts were done. We have proved by other evidence acts of violence. The purpose of this evidence, as I understand it, is to show that there was brought to the notice of the governor statements that outrages were committed so as to at least put him upon enquiry and make it his duty to have applied a corrective, and not to allow these men to go on in these acts of violence, if they were guilty of them. The presiding officer has very correctly decided that the question is one as to the weight of testimony, and not as to its admissibility; and the question is whether the governor had sufficient notice to put him upon enquiry, and if he found the allegation true to apply the remedy.

Senator JONES. Mr. Chief Justice, I would like to ask the counsel for the managers if they propose to read every publication in relation to charges already proved?

Mr. MERRIMON. Mr. Chief Justice, our object is simply to show that these facts were published to raise the presumption that notice of the outrages were brought to the attention of the governor.

Mr. GRAHAM. We contend that if they were brought to the attention of the respondent and he took no measures to prevent the outrages, his non-action is a part of the criminality.

The CHIEF JUSTICE. The counsel may separate those portions of the articles which have reference to the outrages from the rest, the comments by the editor.

Mr. Manager SPARROW read the residue of the article in the words following:

"The arrest of Mr. Wiley was brutal, he was plowing with "his coat off and refused to go with them, he was knocked "down and put on his own horse, his feet tied under the horses "belly and his hands behind his back. Bare back with his "coat off he rode into town to Kirk's camp. Judge Kerr is "vilely cursed by the sentinel who stands at the window of his "house. Ladies are insulted and with their children are leav-"ing the town. These facts are given to me by a gentleman "just from Yanceyville, I feel sure they are true.

"The dispatch is signed by a gentleman of reliability."

Mr. McCORKLE. I submit this consideration, Mr. Chief Justice: suppose the man who wrote that communication were here; he would not be permitted to testify to the facts he stated in the article, because they were hearsay. He got them from others.

Mr. MERRIMON. I submit, Mr. Chief Justice, a further consideration: suppose that the man were here and he stated that he had told the governor of these facts, I ask if the fact would not be competent to be proved.

The CHIEF JUSTICE. The evidence is not offered by the managers as proof of the facts set forth in the printed statement, but simply as evidence of the fact that the governor had notice of the alleged outrages.

Mr. SMITH. Then I suppose the senate will overrule the decision made yesterday, and let us show what the declarations

of the governor were in respect to these outrages when he heard of them?

Senator WARREN. I think, Mr. Chief Justice, that the question is understood.

Mr. Manager SPARRQW read in evidence the following from the *Sentinel* of July 30th 1870:

WORSE AND WORSE.

MORE ARRESTS BY KIRK.

THE HANGING BEGUN.

HOLDEN IS DETERMINED TO FORCE A CONFLICT BEFORE THE ELECTION.

We received the following dispatch at 4 o'clock, dated

HILLSBORO', July 30th.

"I learn from passengers and employees of the railroad just "from Alamance that Holden's troops arrested thirty citizens of "Alamance last night. Among them is William Patten, as "respectable a citizen as there is in the county, who was hung "up three different times and cut down to make him confess "who killed Outlaw. The last time it was an hour before he "recovered. He made no confessions to the last. Kirk will "have to arrest more than thirty men to elect William A "Smith."

Senator JONES. I move, Mr. Chief Justice, that only such portion of the article be admitted upon the record of the court as it relates to the facts, and that the editor's comments thereon be not allowed.

Mr. SMITH. I would suggest, Mr. Chief Justice, on further consideration, that by leaving out the comments, the court do

the respondent a wrong. It is the comment of the editor which shows the animus.

Senator JONES. I withdraw the motion.

Mr. Manager SPARROW read in evidence the telegram printed in the Raleigh *Sentinel* of August 5th, 1870, in the words following:

HILLSBORO, N. C., August 5.

MR. MOORE, *Sentinel* OFFICE:

I was arrested by Lieutenant Hunnicutt this morning.

J. TURNER, Junior.

Mr. Manager SPARROW also read in evidence he editorial published in the same issue in the words following:

"LAWLESS ARREST OF THE EDITOR OF THIS PAPER.

"The above telegram announces the fact of the arrest of Mr. "Turner, editor of this paper, by *order* of Gov. Holden. No "cause for the arrest has been assigned, indeed, none exists. The "arrest has been made with a two-fold view. One to gratify "the malignity and vulgar vanity of an upstart who is gov-"ernor of the state by accident, and the other to suppress the "voice of this press in its exposition and denunciation of the "crimes and outrages against public and private property. "This is intended as a blow at Mr. Turner, personally, because "Holden hates and fears him, and at public liberty by putting "down the press?"

Mr. Senator JONES. I dislike, Mr. Chief Justice, to interrupt the reading, but I must object to these editorial comments.

Mr. Manager SPARROW. I will stop right there. I now read a paragraph in a communication from Mr. Turner pub-

lished in the *Sentinel* August 6, 1870, under date of Hillsboro, Aug. 4.

"Now we repeat, come on with your chains. Patton has "felt your rope and I can bear your chains and defy you too,— "you are now in a desperate conflict with a secret society you "*pretend* to believe that I am connected with, but I *know* this "to be *only* pretence on your part. I have reason to believe "you have had a spy and detective visiting my office for three "months or more. You are welcome to all you have learned "through the scamp."

Mr. Manager SPARROW next read an editorial paragraph contained in the same paper in the words following:

"PATTEN.—The *Standard* this morning has a card from "from William Patten denying that he was hung up by the "neck by Burgen in Alamance to make him confess in regard "to the Kuklux organization. In regard to this card we say "emphatically that it was either extorted from him under "threats, which method of procuring certificate seems to be "getting quite common lately, or he deliberately states facts in "hopes of currying favor. The hanging can be substantiated "by competent witnesses and was acknowledged by Burgen "and Patten last Monday."

Mr. Manager SPARROW next read in evidence from an editorial in the *Sentinel* of August 9, in the words following:

"LAWLESS OUTRAGE.

"Mr. Turner, the editor of this paper, having been seized by "surprise and borne off to prison, we have not until very "recently, been informed of the circumstances of outrage and "indignity to his household.

"We learn on undoubted authority, that after surrounding

"and capturing him when alone near the railroad station, a "band of armed men went to his dwelling, half a mile distant, "outside of the town of Hillsborough, and there hunted through "every room in the house without warrant, taking several "pieces of fire-arms, including the shot-guns of his little boys."

Senator JONES. I understood the decision of the chief justice to be that only those charges referring to Caswell and Alamance were to be introduced in evidence.

The CHIEF JUSTICE. The paragraphs that have just been read have relation to the conduct of the troops towards Mr. Turner, and they explain the correspondence between him and the governor's secretary.

Mr. Manager SPARROW read in evidence an editorial from the *Sentinel* of August 12, in the words following:

"CONTINUED LAWLESSNESS IN ALAMANCE.

"We learn that about daylight a few mornings since, the "mail train on the N. C. road was required by an armed band "of Kirk's men to stop at Graham station, and that this band, "numbering about twelve men, leaped on board with seven "citizens of Alamance whom they had seized as prisoners, "yelling and cursing the prisoners and pointing pistols at their "persons, with threats of instant death, &c., and in this way "took them to Company Shops. The leaders in the crowd "and most boisterous in their threats, were three negroes who "appeared to take great delight in the scene of barbarity. The "defenceless victims appear to have been taken from their beds "in the night, and not to have been allowed to dress comfort-"ably and hardly decently."

Mr. SMITH. The evidence of the railroad conductor on that train is directly to the contrary of the statement made in the article which has just been read.

Mr. CHIEF JUSTICE. It will enable the members of the court to fix the proper weight to be attached to the article.

Mr. MERRIMON. The inference is that this does not refer to the same transaction which was testified to by the conductor.

Mr. Manager SPARROW read in evidence an extract from a letter quoted in the *Sentinel* of August 15th, in the words following:

"This forenoon, Mrs. Turner went down to look at her "husband through the window and have a few words with him, "but he was not allowed to come to the window. He waived "his hand and shook his head to intimate to her that he was "not allowed to see or speak to her. O Liberty! how many "crimes are committed in thy name!

* * * * * * * * *

"Mrs. Turner has not yet given way once, but keeps up "bravely. Last night hearing her talking, they threw several "large stones towards the place where they heard her voice. "The stones struck all around her but fortunately did not strike her."

Mr. Manager SPARROW read from an editorial in the *Sentinel* of August 17th, 1870, an extract in the words following:

OUTRAGE UPON MR. TURNER AND OTHERS!! HOLDEN AND HIS CLIQUE DOING THEIR WORST. (FROM GRAHAM.)

"We learn from undoubted authority that on last night, "Hon. Josiah Turner, Jr., sheriff Griffith and Mr. Wiley, of "Caswell, who with the other arrested parties had been kept in "the court house at Graham since their removal there, *were* "*men taken out of the court house by Kirk's men and locked* "*up in the dungeon cells of the county jail.*

"Hon. John Kerr with a dozen others we are told were per-
"mitted to board at the hotel in Graham; the rest except
"Messrs. Turner, Wiley, Griffith and perhaps others who were
"imprisoned last night in the jail were permitted to remain in
"the court house."

Mr. Manager SPARROW read in evidence affidavit of Lucien H Murray, published in the *Sentinel* of August 20th, 1870, in the words following:

"UNITED STATES OF AMERICAN, }
"District of North Carolina. }

"Lucian H. Murray, being duly sworn, deposeth and saith,
"that he is a citizen of the United States and of the state of
"North Carolina, residing in the town of Graham in the
"county of Alamance in said state, that he belongs to no
"military organization and is in no manner subject to military
"law, but that his occupation is that of a clerk and salesman in
"a retail store in said town of Bason & Son, that he is a native
"of and has all his life resided in the said county of Alamance
"and is now of the age of twenty-seven years. That on the
"27th of July last, being informed that a guard of soldiers
"from the camp of G. W. Kirk at Company Shops, had been
"to his place of business to arrest this affiant while he was
"absent therefrom, he went to the said camp and reported
"himself to one B. G. Burgen who claimed to be lieute-
"nant colonel under Kirk in the command of a regiment
"which they called "state troops," that said Burgen immedi-
"ately ordered this affiant to be put under guard and de-
"tained in said camp as a prisoner. This affiant was placed
"in a tent with two other persons, also prisoners; and in the night
"succeeding about 1 o'clock a. m., the said Burgen came to
"the tent with a candle and addressed this affiant who was
"awake asking "Is that you Murray," to which affiant replied
"'Yes.' Said Burgen then retired to his own tent, and
"shortly afterwards came back without a light and touched

"this affiant upon his feet and in a low tone of voice ordered "him "to get up" the other two prisoners being apparently "asleep.—This affiant replied, "Very well, can I get my "shoes?" The said Burgen answered, "No you will not need "them long." He then took this affiant to his own tent where "there were three of his men armed with pistols; the said Bur-"gen then said to this affiant that "he must tell him all about "the hanging of Wyatt Outlaw." This affiant replied that he "knew nothing about it and that he did not know that "Outlaw had been hanged till aftersunrise the morning after it "was done. The said Burgen replied "It is a damned lie. I "know that you do, and proceeded to say that there was an affi-"davit filed in his office against this affiant stating that he "this affiant had seen Outlaw hanged by one Adolphus "Moore. This affiant replied it was false, that he knew noth-"ing about it; the said Burgen put a rope around the neck of "this affiant, and said: "Patton and Rogers (alluding to two "others of his prisoners) knew nothing about it till they were "hung up, and they could then tell all about it, and you must do "the same." He then took this affiant to a tree about fifty "yards from his tent, with the three armed men aforesaid, "threw the end of the rope still on this affiant's neck over a "branch of the tree, and having already tied this affiant's arms "in the manner usual with criminals about to be executed, he, "the said Burgen, drew the rope and swung this affiant up by "the neck. After suspending him for a short time he was "let down. The said Burgen asked him if he would confess: "then this affiant replied that he knew nothing to confess. "The said Burgen and his men aforesaid then presented their "pistols at this affiant's breast and threatened to blow his "heart out if he did not confess. This affiant still refusing "to make the admission demanded, the said Burgen "seized the rope and again hoisted this affiant from "the ground more roughly than before, and suspending him "longer. Upon being let down this affiant was unable to speak "for some time. The said Burgen then said, "Now confess

"that you saw Moore." Affiant replied that he could not do it; "said Burgen replied, "You must acknowledge it or die," and "said to one of his men, "Sergeant, hang him up to that tree "and let him hang till 8 o'clock in the morning, then cut him "down and bury him under the tree." After other conversa- "tion, and threats of killing this affiant, the said Burgen said to "this affiant: "I will now give you until to-morrow night, and "if you don't confess then I will kill you dead." Affiant re- "plied: "I will never confess, for I have nothing to confess." "This affiant was then taken back to his tent aforesaid, after "being charged to say nothing about what had occurred, and "threatened with death if he divulged it. He was not tortured "again, but has been held by the said Kirk as a prisoner until "brought to Salisbury before his Honor Judge Brooks on "yesterday.

LUCIUS H. MAUNY.

"Sworn and subscribed before me this 19th of August, 1870.

WM. LARKINS,

Clerk U. S. District Court, Dist. Cape Fear."

The CHIEF JUSTICE. The presiding officer thinks it bardly necessary to detain the court by reading the other two affidavits. They can be considered in evidence and referred to.

The affidavits referred to are in the words following:

"UNITED STATES OF AMERICA,

"District of North Carolina.

"D. W. Weedon, being sworn deposeth and saith, that he "is a citizen of the United States and of North Carolina, now "residing and has always resided in the county of Alamance "in said state, that he is in no military organization and in "no way subject to military law.

"That on or about the 23d of July last, he, his affiant, "was arrested by one B. G. Burgen claiming to be lieuten- "ant colonel of a body of armed men, called by him North "Carolina state troops encamped at Company Shops in said

"county, no cause being assigned for said arrest, and detained "with sundry other citizens of the state held also as prisoners "by the said Burgen and G. W. Kirk who claimed to be "colonel of the said troops. That he was paroled at one time "for two or three days, with an obligation to report to said "Kirk at Yanceyville when he again went into confine-"ment with many other prisoners, that while thus confined "in the upper room of the court house of Caswell, upon see-"ing a soldier below carelessly handing a pistol he, this "affiant remonstrated that he might shoot some one. The "soldier immediately replied with an oath, "I will shoot you." "and fired his pistol, the ball passing near the head of this "affiant. From this time forward this affiant seemed to have "incurred the hostility of said Kirk and his officers, who cursed "and maltreated him on divers occasions; that after the service "on said Kirk of the writ in this case, he went with this affiant "and other prisoners to Graham, in Alamance county, and con-"fined his prisoners, this affiant among them, in the court house "there; that on Tuesday afternoon, of the present week, this "affiant was taken by a lieutenant and guard of said Kirk and "carried to the common jail of said county, and there confined "until Thursday, when, with the other prisoners aforesaid, he "was brought to Salisbury; that on the morning after this "affiant was committed to jail, a lieutenant Banner, of the said "troops, who seemed to be the keeper of the prisoners who "had been committed to jail, placed an iron manacle on one of "the legs of this affiant above the ankle, to which was affixed "a chain and staple, fastening it to the floor; that "the said Banner rivoted the manacle on the leg of this affiant "in a very rough manner, giving to this affiant great pain in "the operation; that he was kept thus ironed until taken from "the jail aforesaid to be carried to Salisbury before his honor "Judge Brooks. That this affiant was never informed of any "charge against him on which he was arrested and confined "and had done nothing to provoke the cruel usuage aforesaid "to which he was subjected. That during all the time of this

"affiant's confinement in jail he suffered for the want of water "to drink; a small quantity of stale water in a canteen was "placed by him soon after his commitment to jail, and none "other furnished to him during his confinement; he asked for "water several times and it was refused and he was cursed in "every instance. When food was sent to him by the citizens "of Graham, the guard threw it to him on the floor of the jail "and forbid him to use a knife, fork or spoon, presenting their "pistols in his face and threatening to shoot him at the same "time.

"D. W. WEEDON.

"Sworn and subscribed this 19th of August, 1870, before me,

"WM. LARKINS,

"Clerk U. S. District Court District Cape Fear."

"UNITED STATES OF AMERICA,

"District of North Carolina.

"George H. Rogers being duly sworn, deposeth and saith, "that he is a citizen of the United States and of the state of "North Carolina, that he is a native of the county of Alamance "in said state, has always resided and still resides in the same; "that he is now nineteen years of age and resides in the family "of his parents, that on Wednesday, the 26th of July last, he "was arrested by one Hunnicutt, claiming to be a lieutenant "in a body of troops encamped at the Company Shops under "the command of one George W. Kirk. After being arrested "this affiant was required to accompany a squad of these armed "men in traversing the county and arresting others and finally "reached the camp aforesaid near 10 o'clock that night. On "the next day one B. G. Burgen, claiming to be lieutenant "colonel of the troops aforesaid, began a conversation with "this affiant, and after it had been for some time continued "inquired of him whether he knew Adolphus Moore. Affi-"ant replied that he knew him by sight but had little "acquaintance. Said Burgen then told this affiant that he this

"affiant knew something of the murder of Wyatt Outlaw. "This affiant denied it. The said Burgen after pronouncing "the denial a *damned lie*, said he would give this affiant till "that night to tell about it. That night about 10 or 11 o'clock "the said Burgen took this affiant to his tent and asked if he "was ready to tell about the murder of Outlaw. Affiant "replied that he had told him all he knew. Said Burgen then "said, "Stop right there, you are telling a damned lie, I know "that you do know and will make you tell it. He then "took this affiant accompanied by said Hunnicutt and several "men to the woods and again asked this affiant if he would "tell about the murder. Affiant replying as before, the said "Burgen said that Patten did not know anything till he hung "him up and then he could tell all about it. He then asked "affiant if he had anything to say. This affiant replied that he "had said all he wished to say. Having put a rope about "the neck of this affiant shortly after leaving the tent, the said "Burgen then ordered the lieutenant, who threw the rope over "the branch of a tree, to swing this affiant up. The lieutenant "drew until the rope was stretched tight around this affiant's "neck. Said Burgen then told the lieutenant "that will do," and "asked affiant if he would then confess and the same reply was "given as before. Affiant was then taken back to the tent. "Affiant has been kept as a prisoner until released by his "honor Judge Brooks, on yesterday.

GEORGE S. ROGERS.

"Sworn and subscribed before me this 19th day of August, "1870.

"WM. LARKINS,
"Clerk U. S. District Court, District Cape Fear."

WILLIAM H. BATTLE, *a witness on behalf of the Managers, was duly sworn:*

Mr. MERRIMON. Mr. Chief Justice, we propose to prove by the witness, Judge Battle, that it was a notorious fact in the city of Raleigh and upon almost everybody's tongue that Mr.

Patten had been hung and that other outrages had been perpetrated and that in that way the knowledge of the fact must have been brought to the attention of the respondent.

Mr. SMITH. We object, Mr. Chief Justice, to the proof offered. It must be shown that the fact was known to the governor. We submit that rumor does not furnish any ground upon which a state official can be impeached.

The CHIEF JUSTICE. The presiding officer is of the opinion that the evidence is not competent, the fact must be broughtto the knowledge presumtively at least, as by the newspaper sent to his office every day containing the facts. Still the presiding officer does not desire to anticipate the argument in reference to its admissibility.

Mr. MERRIMON. I can cite the court to an authority. It was a case where a murder was committed near the Dismal Swamp, and it was allowed to be proved that there were runaway negroes who were living in the swamp.

Mr. CHIEF JUSTICE. For what purpose?

Mr. MERRIMON. As affording some evidence that somebody might have committed the murder besides the party charged. All I claim is that the fact that this was bruited about by everybody as some evidence that the governor knew it.

The CHIEF JUSTICE. The presiding officer is unable to see how rumor or hearsay can be admitted as evidence in a court of justice.

CREED F. YOUNG, *a witness called on behalf of the Managers, being duly sworn, testified as follows:*

By Mr. MERRIMON.

Q. State your name, age, place of residence and business? A. My name is Creed F. Young; I reside at Burnsville, North Carolina; I am a merchant and trader generally and am thirty-one years of age.

Q. State whether you have any general acquaintance with the people in the counties of Yancey, Mitchell and Madison? A. I have.

Q. State to the court if you know what was the reputation

of the men commanded by George W. Kirk in that section of the country during the late war? A. Bad.

Q. [By Mr. Smith.] Do you know their reputation? A. I do.

Q. Do you know it well or otherwise? A. I know it very well.

Q. What was their reputation? A. Stealing and robbing was their reputation.

Q. Give the senate an idea of the character of the men, whether they were orderly or disorderly or otherwise? A. I think they were disorderly, and most of them bad men. Some of them I have personal knowledge were very bad.

The CHIEF JUSTICE. It is not proper to give personal knowledge. What is wanted is their general character.

Q. How would you describe them to the court? A. As being a band of lawless men.

Q. Do you know whether any of these men were under Kirk in the military movement we have been taking testimony about here? A. Some of the men were with Kirk. I saw them in command of Kirk's officers and they said they belonged to Kirk's command.

Q. Did you see them go this way and come back? A. I did.

Q. Were these men members of his old force during the war any of them? A. Yes, sir.

Mr. MERRIMON. I suppose, Mr. Chief Justice, that I cannot speak of individual acts?

The CHIEF JUSTICE. The witness is not allowed to speak of personal knowledge of individual acts but of their general character.

Mr. MERRIMON. Then, as I understand the presiding officer, no individual acts done by these men are admissible.

The CHIEF JUSTICE. The ruling of the presiding officer is, that you must prove by general reputation the character of the men, that you cannot prove a particular fact to show a general bad character.

Cross Examination.

By Mr. Smith.

Q. In what part of the state do you reside? A. West of the ridge, western North Carolina, Yancey county.

Q. Is that the county in which these troops were raised? A. Some of them were raised in that county.

Q. How many? A. Forty or fifty.

Q. Do you know the men personally? A. I do a great many of them—half of them or more.

Q. Do you know the character of them all? A. Most of them; I do not mean to say that I know the character of them all, but I do know the character of most of them.

Q. Is the character you have given their general reputation all over that county? A. That is their general reputation.

Q. Were these men in the United States army. They stated they belonged to Kirk's command. I saw them under the command of Kirk's officers.

Q. During the war? A. About the close of the war.

Q. Kirk's force was a United States force? A. I do not know.

Q. Do you not know whether they were under the United States flag? A. They said they were.

Q. Don't you know that as well as you know that any other troops were under the United States flag? A. I suppose they were.

Q. These men were a part of the same men who were disbanded when the war was over? A. Yes, sir.

Q. And they were re-enlisted in Kirk's last command? A. Yes, sir.

Q. You do not know the great bulk of Kirk's command, some eight hundred in number? A. No, sir.

Q. You only know of those you speak of? A. I know of some others from Mitchell county and Madison county.

Q. how far do you live from Mitchell county? A. About ten or twelve miles.

Q. From the line? A. Yes, sir.

Q. Do you know the reputation of the men in Mitchell county among their neighbors there? A. I think I do.

Q. Have you heard their neighbors generally speak of them? A. I think I have.

Q. How far do you live from some of these persons you speak of? A. Ten, fifteen or sixteen miles.

Q. How far from others? A. I just speak of those that I know of.

Q. You are fifteen miles from all that you know? A. From ten to twenty miles say.

Q. Twenty miles would take in the most distant of them you know? A. That is in Mitchell county.

Q. Do you undertake to say that you know the reputation of these men to be bad in the neighborhood in which they live? A. Most of them I think I do.

Q. In the neighborhood in which they live? A. Yes, sir. I think I do.

Q. You do not live in Mitchell county? A. No, sir.

Q. You live several miles from the county line? A. Some ten or twelve miles.

Q. Did these men have that reputation during the war? A. Yes, sir.

Q. They had that reputation among the confederate soldiers? A. It was their general reputation.

Q. Was not that the general reputation of all the United States forces in that part of the country? A. No, sir, it was not.

Q. What forces were there which had any better reputation? A. There were some forces there of whom I did not hear that they were robbing, stealing or plundering.

Q. Were there any other forces there except Kirk's in that part of the county? A. Yes, sir.

Q. United States forces? A. There were some men there I think who belonged to the 8th Tennessee.

Q. Who commanded them? A. Colonel Miller

Q. Did they have the same bad reputation? A. I think

some of few of them had a bad reputation but not as a general thing.

Q. Was this reputation of Kirk's troops which you speak of the result of their acts during the war? A. I have heard it during and since the war.

Q. Was their reputation which you have spoken of acquired during or since the war? A. During and since the war.

Q It has continued since the war? A. Yes, sir.

Q. Do you know of any one of them to have been guilty of the acts of which you have spoken? A. Yes, sir. I have known of them being a band of robbers.

Q. Do you know that yourself? A. Yes, sir.

Q. Who do you know that of? A. One John Wilson, a lieutenant or captain. I know of his stealing.

Q. Since the war? A. Yes, sir, at my house. He had men with him robbing.

Q. Did you take any steps to arrest him at that time? A. It was just directly after the war closed.

Q. What has been their conduct since the war closed—have you heard anything? A. I have. I know that the sheriff tried to arrest this man Wilson, so he said, and he was unable to do it.

The CHIEF JUSTICE. You need not tell what the sheriff stated.

Q. You don't know whether they acquired this reputation by their conduct since there was a settled peace, or whether they acquired it during the war? A. What time was the war over? It was some time after the war that these depredations were committed. I do not know exactly how to answer your question.

Mr. GRAHAM. I believe that the president's proclamation announced that peace was restored in 1866.

Q. (By the Chief Justice.) Do you know what time the armies were disbanded? A. I do not know as I do.

Q. Were there some of these soldiers who were in the Con-

federate army before they went into the federal service? A Yes, sir.

Q. They were in both armies? A. Yes, sir.

Q. Were you in the Confederate service? A. I was.

Q. Were you in that part of the country during the war? A No, sir.

Q. You were at a distance? A. At a distance. I resigne and came home before the war closed. I was captain in tl confederate army.

Q. When did you come home? A. In 1862 or 1863.

Q. And you remained there after that? A. Yes, sir.

Q. Were you in the service after that? A. No, sir.

Q. What regiment were you in? A. The 16th North Ca olina.

Q. Who commanded it? A. Col. McElroy.

Q. You left the service in 1862 or 1863? A. Yes, sir.

Q. And were in the army no more? A. No, sir.

Re-Direct Examination.

By Mr. MERRIMON.

Q. Did you have any general acquaintance in the county Mitchell and in the County of Madison, and if so, how did y become acquainted? A. I had been buying stock for seve years and I became acquainted with the people by ridi through those counties purchasing stock.

Q. State how extensive your acquaintance was? A. I am ve well acquainted in the county of Yancey. There are but fe people whom I don't know and I have a general acquaintan in the counties of Madison and Mitchell.

Q. I understood you to say in reply to a question that the men had belonged to both armies? A. Some of them had. understood they belonged to the Confederate army, and th stated they had belonged to the United States army. I s them under the command of United States officers.

Q. Do you know the reputation of Kirk in that country? Yes, sir.

Q. What is it? A. It is bad.

Q. In what respect? A. His general reputation is that of a robber and murderer.

Q. Do you know that this man Wilson committed any other outrages than the one you have referred to? A. Not of my own personal knowledge.

Re-cross Examination.

By Mr. Smith.

Q. Do you know Col. Kirk personally? I know him when I see him.

Q. Do you know what his reputation is among his neighbors? A. Yes, sir.

Q. Where does he live? A. Near Greenville, Tennessee.

Q. How far from your residence? A. I suppose between 75 and 100 miles.

Q. Do you know what his reputation is among his neighbors 75 miles distant from you? A. I know what is talked of among them. I have heard several speak of him. I have been to Greenville, Tennessee, often where he lives.

Q. Were you ever at Jonesboro'? A. Yes, sir.

Q. Many times since Kirk has lived there? A. Yes, sir, since he has been living over there.

Q. Do you know what his reputation is among the people about Jonesboro'? A. I have heard his character spoken of.

Q. Do you know his general character and standing among the people at large? A. I don't know only from those I have heard speak of his character.

Q. Have you heard enough spoken of him there to know what the general opinion of him is? A. I have heard several speak of him. I do not know how many it would require to make up reputation.

Q. Have you been in that place for the last four or five years? A. Yes, sir, frequently.

Q. When last? A. About a year ago.

Q. Is that the last time you have been there? A. Yes, sir, I think so.

Q. Was Kirk there then? A. He was not living in Jone boro'.

Q. Where was he? A. Somewhere near Greenville.

Q. You don't know where he was living? A. No, sir, never was at his house.

Q. You don't know then what the opinion of his neighbo is, because you do not know where he lives? A. I never w at his house.

Q. You never saw that? A. I never did.

Q. You do not know who his neighbors were at that time A. I suppose men living eight or ten miles from him might b regarded as his neighbors.

Q. But you do not know who were his surrounding neig bors? A. No, sir.

Q. And you don't know that you ever heard them say an thing about him? A. No, sir.

Q. Did he live in this state since the war? A. No, sir.

Q. Don't you know that he kept a store? A. Directly aft the war he had a store at Asheville, North Carolina.

Q. Do you know how long he kept that store? A. I do n know how long.

Q. Did he live in Asheville? A. I think he was there in h store.

Q. Was his family there? A. I do not know.

Q. Was that his residence? A. I do not know.

Q. What I desire to know is whether the reputation whi you have spoken of was not based upon his conduct during th war while he was in command of a regiment—did you ev hear anything to his prejudice outside of his military oper tions? A. I don't know that I have.

Q. (By Mr. Merrimon.) Was he a very notorious person A. He is said to be.

Senator JAMES A. GRAHAM, *a witness called on beha of the Managers, being duly sworn, testified as follows:*

By Mr. MERRIMON:

Q. Look at this paper, I now give you a printed copy of the muster roll of Kirk's command, and say how many persons are named there who are persons of color? A. I find the name of Alfred Barnhill, of the town of Graham, Levi Dickey, I think he is a colored man, though I do not know him personally; I have learned that he is a colored man.

Mr. SMITH. I would like to enquire the object of this testimony.

Mr. MERRIMON. To show that colored men were enlisted in the service whereas the act provides that the two races shall be organized in different companies.

Mr. GRAHAM. The militia law of North Carolina requires a separate organization for each of the races.

Q. Do you find any others? A. Levi Hurdle is a colored man and Anderson Harrell.

Mr. SMITH. These men were volunteers, not members of the militia.

Mr. GRAHAM. Under our law the state cannot have anything but militia.

Mr. SMITH. I think the statute which the gentleman refers to speaks of the enrollment.

Q. Do you find any others? A. Aleck Ruffin is a colored man. These are all parties living in the town of Graham, and I have seen them in uniform with Colonel Kirk's troops.

Q. Do you notice any others which are put down as men of color? A. There is one other name—Edward Freeland. I think that he lives in the town of Graham, but I am not certain.

Q. Is the name of Hark Ruffin there? A. No, sir, his name is not here.

Cross examination waived.

ALEXANDER C. McALLISTER, *a witness on behalf of the Managers, being re-called, testified as follows:*

By Mr. MERRIMON.

Q. Do you know of any colored men in the town of Graham

who were members of Kirk's troops? A. I know that Le
Dickey. Anderson Harrell and Aleck Ruffin are colored me

Q. Do you know a colored man of the name of Ha
Ruffin? A. Yes, sir.

Q. Did he serve in that army? A. Yes, sir, I recolle
seeing him in uniform. I do not know what capacity he serv
in, but he was in uniform.

Mr. SMITH. I have now found the militia law of 18
It is on page 35 of the laws passed at the special session of t
year. Section 7 reads as follows: "The white and color
"militia shall be enrolled in separate and distinct compan
"and shall never be compelled to serve in the same companie

Mr. MERRIMON. Mr. Chief Justice, the managers r
their case for the present.

Mr. McCORKLE. Mr. Chief Justice, the prosecution havi
announced that they have closed their case for the present,
suppose, under the agreement that was made some time ago,
additional time will be given, after all the evidence has been pu
lished, to enable the respondent's counsel to prepare to op
their case. The printing of the proceedings is some days
arrears, and it will be apparent to the court that we ought
have time enough to look over the proceedings before we a
compelled to go into our defence, and I would suggest th
when the court adjourns it adjourn to meet on Monday wee
In the meantime I will state that we have not our witnesses her
having summoned very few whom we deemed to be materia
and it is essential, before we proceed to open the case, that w
have an opportunity to consult with the witnesses.

Mr. CONIGLAND. Mr. Chief Justice, I desire to make
brief statement in respect to the length of the recess of the cou
The court has exhibited to us all the courtesy that we could d
sire, and has acted with a very liberal spirit. Thirty days w
given the respondent in the first place to enable him to file h
answer, though, undoubtedly, that time was as much require
by the managers as by the respondent. The respondent coul
not summon his witnesses until the bill was passed by the le

lature authorizing an appropriation for their pay, and he had to await that event before he could summon any witnesses at all. Whilst that matter was pending, another question arose which prevented the respondent from summoning his witnesses and that was in reference to the admission of evidence. Until that was determined he could not know what witnesses to summon. No doubt if the respondent is allowed a reasonable time to make a preliminary examination of witnesses the time of the trial will be materially shortened.

Mr. GRAHAM. Mr. Chief Justice, one of the counsel for the respondent [Mr. McCorkle] spoke of an agreement which was made in reference to an adjournment. While I desire that the respondent should have all the indulgence consistent with justice, yet I am not aware of any agreement having been entered into between counsel for any extended recess in the trial.

Mr. McCORKLE. What I had reference to was the agreement that the proceedings should be printed every morning and laid upon the desks of members and counsel.

Mr. GRAHAM. That was an expectation but I am not aware that there was any agreement on the part of the Managers that there should be any lengthened adjournment.

Senator ROBBINS of Rowan. Mr. Chief Justice, I stated several days ago that I should move, when the case for the managers was closed to allow the respondent two days to prepare for his defence. I am willing to extend the time and make it three days and to that end I offer the following order:

Ordered, That the respondent be allowed until Thursday, February 23d, to open his case.

Senator EDWARDS. While the court is discussing this question I think, Mr. Chief Justice, that every person not a member had better leave the chamber and allow the members to decide the matter without anybody being present.

Senator ROBBINS, of Rowan. I do not think it necessary.

Senator MERRIMON. I think if the respective counsel could agree upon the time, it would relieve the court of any embarrassment in the matter.

Senator ROBBINS, of Rowan. Mr. Chief Justice, I thin that it is the business of the court to determine the matter.

Senator EDWARDS. I move that the court be cleared a that nobody be allowed to be present whilst the subject of tl adjournment is being considered.

Senator WORTH. I hope, Mr. Chief Justice, that we sha have no secrets in reference to our action in this matter.

The CHIEF JUSTICE put the question on the motion Senator Edwards, and it was decided in the negative.

Senator WARREN. I would like to inquire, Mr. Chi Justice, of the counsel for the respondent the probable leng of time that they will consume in the examination of the witnesses and what number they propose to examine.

Mr. McCORKLE. I really cannot tell. I have had tl management of the case; thus far we have issued some thir subpœnas.

Mr. MERRIMON. How many names in each subpœna

Mr. McCORKLE. I mean I have issued subpœnas f thirty or forty witnesses. We may have to summon others.

Senator WARREN. I move, Mr. Chief Justice, to amer the order offered by the gentleman from Rowan, [Mr. Robbin by striking out Thursday and insert in lieu thereof Tuesda If, at that time, the counsel for the respondent think the ought to have further time to enable them to open the case, for one would be willing to grant it. I do not see that it necessary for their opening that they shall have the enti printed proceedings on the part of the managers. I suppo that the opening of the case will consist of a statement of tl law and the facts on their side.

Senator ROBBINS, of Rowan. Mr. Chief Justice, I do n think it is necessary that so short a time should be given as proposed in the amendment and I insist upon the origin order. By taking a recess until Thursday, inasmuch as th day will be mainly occupied by the opening of the case for tl respondent, it will give them practically four days to prepa their proofs, and I hope that that time will be allowed.

Mr. CONIGLAND. I desire to say, Mr. Chief Justice, (and I presume that credit will be given to my statement,) that we cannot with the number of witnesses we have, be prepared to open our case before Thursday next with justice to the interests of the respondent we would like to have an adjournment till Monday week, but we will be content with Thursday. I am satisfied that we cannot be ready any sooner.

Mr. McCORKLE. I will further state that our witnesses are not to be here till Monday, and that we will have no opportunity to examine any of them till then.

The CHIEF JUSTICE announced the question on the amendment offered by Senator Warren.

A division being called for,

The CHIEF JUSTICE put the question on the adoption of the amendment, and it was decided in the negative; but

Before the announcement of the decision,

Senator EDWARDS called for the yeas and nays.

A sufficient number seconding the call the yeas and nays were ordered.

The CLERK proceeded to call the roll of Senators on the adoption of the amendment, and it was decided in the negative by the following vote:

Those who voted in the affirmative, were:

Messrs. Adams, Albright, Cowles, Currie Edwards, Gilmer, Graham, of Alamance, Linney, Love, Mauney, Merrimon, Skinner, Troy, Waddell and Warren—15.

Those who voted in the negative, were:

Messrs. Allen, Barnett, Battle, Bellamy, Brogden, Brown, Cook, Council, Dargan, Flemming, Hyman, Jones, King, Latham, McClammy, McCotter, Moore, Murphy, Norment, Olds, Price, Robbins, of Davidson, Robbins, of Rowan, Speed, Whiteside and Worth—26.

The CHIEF JUSTICE then put the question on the adoption of the order offered by Senator Robbins of Rowan, and it was decided in the affirmative.

On motion of Senator Jones the court adjourned to meet on Thursday, February 23d, at 11 o'clock, a. m.

APPENDIX, NO. 2.

STATE OF NORTH CAROLINA,

To the Honorable RICHMOND M. PEARSON,
Chief Justice of the Supreme Court:

The petition of Adolphus G. Moore respectfully showeth unto your Honor, that he is a citizen of the county of Alamance in said State; that he on Friday morning, the 15th day of July, A. D. 1870, in said county, at the house of Thomas M. Holt, he was arrested by a number of armed men purporting to be soldiers and acting under the orders of one George W. Kirk, claiming to act as a military officer; that he was forced by said armed persons to go to the headquarters of the said George W. Kirk at Company Shops in said county; that the said Kirk informed him that he, the said Kirk, had ordered his said arrest and detention and had done so by the order of his superior officer—but he did not state who his superior officer was; that he demanded to know for what cause and by what authority he was so arrested and detained; that no cause was given other than as aforesaid; that petitioner is still so held and detained and deprived of his liberty by the said George W. Kirk, at Company Shops aforesaid; that he is not aware of any cause for his said arrest and detention; that he is a peaceable and law-abiding citizen and has committed no offence to his knowledge; that there was no warrant or authority for his arrest to his knowledge; that he made demand for copies of the process authorizing such arrest and received for reply what he herein stated; that said arrest is unlawful because made without any lawful warrant or authority, and that the matter

of said arrest has not been examined and adjudged upon a writ of *habeas corpus* heretofore granted.

May it please your Honor to grant unto your petitioner a writ of *habeas corpus*, to be directed to the said George W. Kirk, commanding him to forthwith produce your petitioner before your Honor, together with any cause for such arrest and detention, to the end, your petitioner may be set at liberty and enjoy his rights as a citizen of the State.

(Signed) E. S. PARKER,
and A. S. MERRIMON,
Attorneys for Petitioner.

Sworn to and subscribed before me this 16th day of July, A. D. 1870.

(Signed) W. H. BAGLEY,
Clerk

STATE OF NORTH CAROLINA,

E. S. Parker maketh oath, that he has heard read the foregoing petition and knows the facts therein stated to be substantially true; that as attorney for said petitioner he saw the said Kirk and demanded to know by what authority said petioner was so held and he gave substantially the grounds stated in said petition; that he knows that said petitioner is so held and detained by the said George W. Kirk, and without authority other than as stated in said petition as said Kirk so informed affiant.

E. S. PARKER

STATE OF NORTH CAROLINA,

Let this writ issue as prayed for in the within petition at chambers.

(Signed) R. M. PEARSON,
Chief Justice Supreme Court

16th July, 1870.

STATE OF NORTH CAROLINA,

To GEORGE W. KIRK, *greeting*:—

We command you, that the body of Adolphus G. Moore, being confined and detained in your custody, as it is said, together with the day and cause of his capture and detention, whatever name he may be called, you have before me, Richmond M. Pearson, Chief Justice of the Supreme Court of the State aforesaid, at the Chamber of the Supreme Court in the city of Raleigh, immediately after the receipt of this writ, to do and receive what shall be then and there considered of him in this behalf.

Witness, Richmond M. Pearson, Chief Justice of the Supreme Court, this the 16th day of July A. D. 1870.

(Signed) R. M. PEARSON,
Chief Justice Supreme Court.

It is admitted by the counsel for the respondent that the writ in the case of A. G. Moore was served by Mr. A. C. McAllister, but not the legality of said service.

STATE OF NORTH CAROLINA,
At Chambers,

Raleigh, July 18th, 1870.

To His Excellency W. W. HOLDEN,
Governor of North Carolina.

SIR:—I have the honor to enclose copies of four writs of *habeas corpus*—issued by me to Col. George W. Kirk, together with affidavits setting out that Col. Kirk refused to make return of the writs, and stating that he made the arrest by your order. As Col. Kirk does not make return I do not feel at liberty to assume the fact that he acted under your orders from the conversation set out in the affidavits.

Please inform me if Col. Kirk acted under orders from you in making the arrests.

Very respectfully yours, &c.

(Signed) R. M. PEARSON,
Chief Justice Supreme Court.

EXECUTIVE OFFICE,
Raleigh, July 19th, 1870.

To the Honorable RICHMOND M. PEARSON:
Chief Justice of N. C.

SIR:—Your communication of yesterday concerning th arrests made by Col. Geo. W. Kirk, together with the inclos ures is received.

I respectfully reply: That Col. Geo. W. Kirk, made th arrests and now detains the prisoners named, by my order He was instructed firmly but respectfully to decline to delive the prisoners. No one goes before me, in respect for the civ law, or for those whose duty it is to enforce it; but the cond tion of Alamance county and some other parts of the Stat has been and is such that though reluctant to use the stron powers vested in me by law, I have been forced to declar them in a state of insurrection.

For months past there has been maturing in those localiti under the guidance of bad and disloyal men a dangerous secr insurrection. I have invoked public opinion to aid me i suppressing this treason. I have issued proclamation after pr clamation to the people of the State to break up these unlawfi combinations! I have brought to bear every civil power t restore peace and order, but all in vain! The constitution an laws of the United States and of this State are set at nought the civil courts are no longer a protection to life, liberty an property; asssassination and outrage go unpunished and tl civil magistrates are intimidated and are afraid to perform the functions. To the majority of the people of these sections tl approach of night is like the entrance into the valley of tl shadow of death: the men dare not sleep beneath their roo at night, but abandoning their wives and little ones wander i the woods until day.

Thus civil government was crumbling around me. I dete mined to nip this new treason in the bud. By virtue of tl

power vested in me by the constitution and laws, and by that inherent right of self-preservation which belongs to all governments, I have proclaimed the County of Alamance in a state of insurrection.

Col. George W. Kirk is commanding the military forces in that County, made the arrests referred in the writ of *habeas corpus*, and now detains the prisoners by my order.

At this time I am satisfied that the public interest requires that these military prisoners shall not be delivered up to the civil power.

I devoutly hope that the time may be short when a restoration of peace and order may release Alamance County from the presence of military force and the enforcement of military law. When that time shall arrive, I shall promptly restore the civil power.

(Signed) W. W. HOLDEN,
Governor.

[After the reply of the Governor to the communication of the Chief Justice yesterday was read]

Chief Justice Pearson said:

Before the argument opens, I will observe to the counsel—the object of argument is to aid me in forming an opinion on four questions of law:—

1. Do the facts set out by His Excellency show that Col. Kirk had "a sufficient excuse" for not making return to the writs of *habeas corpus*, so as to relieve him from pains and penalties of an attachment?

2. Do the facts set out show an "insurrection," and a condition of things putting the lives and property of our citizens in such imminent peril as to suspend the writ of *habeas corpus* in the counties subjected to military occupation?

3. Suppose the writ not to be suspended. As in the present condition of the counties it is highly probable, nay, in my opinion, *certain*, that an order to the sheriff of a county to call

out "the power of the county" and, *with force*, take the pet tioners out of the hands of the military authorities, will plung the whole State into civil war, should not the Act of 1868–'6 be so construed as to make it subservient to that clause of th constitution which confers power on the Governor to call out th militia to suppress riot and insurrection in counties where th Governor has exercised this power, and taken military posses sion?

4. If so, should the writ be directed to the Governor?

I shall be pleased to hear argument on these subjects, a questions of law, and will leave it to the good sense of counsel to decide whether an excited discussion, such as on yesterday will be calculated either to aid me in forming an opinion, or t answer any other useful purpose.

[After argument of counsel, the Chief Justice delivered hi opinion, and ordered as follows:]

To DAVID A. WICKER,

Marshal of the Supreme Court:

You are hereby commanded, in the name of the State North Carolina, forthwith to bring Adolphus G. Moore– wherever to be found—before me, RICHMOND M. PEARSO Chief Justice of the Supreme Court, at the room of the S preme Court, in the city of Raleigh.

Herein fail not, have there this writ and make due retur July 23d, 1870.

(Signed,)

R. M. PEARSON,

Chief Justice Supreme Court.

Instructions:—You will wait upon His Excellency the Go ernor, exhibit to him this writ, and a copy of the opinion i "Moore's case," and make return to me.

(Signed,) R. M. PEARSON, C. J. S. C.

On Saturday, 23rd inst., I delivered to His Excellency copy of the opinion in the case of Moore, and informed hi that I had a writ for the body of Moore. His Excellency d

rected me to call on this instant, he declined to deliver the body, and handed me the within communication for the Chief Justice.

(Signed,) DAVID A. WICKER,
Marshal.

July 26th, 1870.

OPINION.

Upon proof of service and the failure of Col. Kirk to return the writ, the counsel of the prisoner submitted two motions:—

1 For an attachment against G. W. Kirk, for failing to make return:

2 For a writ, to be directed to the sheriff of some county, commanding him, with the power of the county, if necessary, to take the prisoner out of the hands of said Kirk, and have him before the Chief Justice.

The fact of service and the failure to make return was a sufficient foundation for these motions. But the affidavit sets out further that G. W. Kirk said "he was acting under the orders of Gov. Holden and should make no return."

This extraneous matter if true, had in my judgment an important bearing on the pending motions, and not being at liberty to assume it to be true on the verbal statement of Col. Kirk, I addressed a communication to His Excellency asking to be informed if Col. Kirk had his orders. The purpose was to have the orders to Col. Kirk avowed or disavowed, and make it a fixed fact one way or the other and to afford an opportunity to his Excellency, if avowed, of setting out the ground of his action, and of being heard by counsel. The cause of truth is always served by argument on both sides.

1 The main question, and one on which both motions depend, is this: does the fact that the Governor had declared the county of Alamance to be in a state of insurrection, and had taken military possession, have the legal effect to suspend the writ of *habeas corpus* in that county? If so, the prisoner takes nothing by either motion; if otherwise, it will become necessary to give them further consideration.

It was insisted by the counsel of the prisoner that the Go ernor's reply is no part of this proceeding, and cannot l noticed. In my opinion it forms a part of the proceeding t the extent of the avowal of the orders given to Col. Kirk (th is in direct response to my inqniry) and of the fact that in th exercise of the power conferred on him, he had declared th county of Alamance to be in a state of insurrection—take military possession and ordered the arrest and detention of th petitioner as a *military* prisoner; the action of his Excellenc is relevant for if the privilege of the writ of *habeas corpus* b suspended, the writ now sued for ought not to be awarded- (*exparte Tobias Watkins*, 3 *Peters*, 193.) The Chief Justic says: "The writ ought not to be awarded if the court is satis fied that the prisoner would be remanded." This case is cite and approved, (*exparte Milligan*, 4 *Wallace*, III.)

His Excellency was also pleased to set out some of the specia facts that satisfied him that the civil authorities of the count were unable to protect its citizens in the enjoyment of life an property; it is not mine to pass upon these facts or judge c their sufficiency.

Mr. Badger, of counsel for His Excellency, relied on th constitution. "The governor shall be commander-in-chief, an have power to call out the militia to execute the law, suppres riots or insurrections and to repel invasion." *Art.* 12, *sec.* 3 *and on the Statue* 1869–70, *chap.* 27, *sec.* 1—"The governo is hereby authorized and empowered, whenever in his judge ment the civil authorities in any county are unable to protec its citizens in the enjoyment of life and property, to declar such county to be in a state of insurrection, and to call int active service the militia of the state to such an extent as ma be necessary to suppress the insurrection"; and he insisted:

1. This clause of the constitution and the statute empower the governor to declare a county to be in a state of insurrectio whenever in *his judgment* the civil authorities are unable t protect its citizens in the enjoyment of life and property. Th governor has so declared in regard to the county of Alamanc

and the judiciary cannot call his action in question or review it, as the matter is confided solely to the judgment of the governor.

2. The constitution and this statute confers on the governor all the powers "necessary" to suppress the insurrection, and the governor has taken military possession of the county and ordered the arrest and detention of the petitioner as a *military prisoner*. This was necessary, for unlike other insurrections it is not open resistence but a novel kind of insurrection seeking to effect its purpose by a secret association spread over the country; by scourging and other crimes committed in the dark, and evading the civil authorities, by masks and fraud, perjury and intimidation; and that—

It follows, that the privilege of the writ of *habeas corpus*, is suspended in that county until the insurrection be suppressed.

I accede to the first proposition; full faith and credit are due to the action of the governor in this matter because he is the competent authority acting in pursuance of the constitution and the law. The power, from its nature, must be exercised in the executive, as in case of invasion or open insurrection. The extent of the power is alone the subject of judicial determination.

As to the second, it may be that the arrest and also the detention of the prisoner is necessary, as a means to suppress the insurrection. But I cannot yield my assent to the conclusion; the means must be *proper* as well as necessary, and the *detention* of the petitioner as a military prisoner is not a proper means. For it violates the declaration of rights.

"The privilege of the writ of *habeas corpus* shall not be suspended." *Constitution art.* 1, *sec.* 21.

This is an *express* provision and there is no rule of construction or principle of constitutional law, by which an express provision can be abrogated and made of no force by an *implication* from any other provision of the instrument.

The clauses should be construed, so as to give effect to each aud prevent conflict. This is done by giving to *art.* 12,

sec. 3, the effect of allowing military possession of a county tc be taken and the arrest of all suspected persons to be made by military authority, but requiring by force of *art.* 1, *sec.* 21, the persons arrested, to be surrendered for trial, to the civi authorities on *habeae corpus*, should they not be delivered ove without the writ.

This prevents conflict with the *habeas corpus* clause anc harmonizes with the other articles of the "declaration of rights' trial by jury," &c., all of which have been handed down to u by our fathers and by our English ancestors as great funda mental principles essential to the protection of civil liberty.

I declare my opinion to be, that the privilege of the writ o *habeas corpus* has not been suspended by the action of hi excellency; that the governor has power under the constitutio and laws to declare a county to be in a state of insurrection, t take military possession, to order the arrest of all suspecte persons, and to do all things necessary to suppress the insu rection, but he has no power to disobey the writ of *habea corpus*, or to order the trial of any citizen otherwise than b jury. According to the law of the land, such action would b in excess of his power.

The judiciary has power to declare the action of the execu tive as well as the acts of the general assembly, when in viol tion of the constitution void and of no effect. Having co ceded full faith and credit to the action of his excellency withi the scope of the power conferred on him, I feel assured he wi in like manner give due observance to the law as announce by the judiciary. Indeed he cannot refuse to do so, withou taking upon himself the responsibility of acting on the extrem principle, "the safety of the state is the supreme law." I wi venture to hope, as evil as the times may be our country ha not yet reached the point when a resort to extreme measure has become a public necessity.

2. The motion for an attachment against Col. Kirk is base on the *habeas corpas* act, *Acts* 1868–'69, *chap.* 116, *sec.* 15 "If any person on whom a writ of *habeas corpus* is served sha

refuse or neglect to obey the same by producing the body, &c., within the time required, and *no sufficient cause be shown*, it shall be the duty of the judge or court forthwith to issue an attachment against such person to the sheriff of any county in the state, commanding him immediately to arrest such person and bring him before the judge or court, and such person shall be committed to jail, until he shall make return to the writ and comply with any order that may be made in *relation to the party* for whose relief the writ shall have been issued."

Col. Kirk has refused to make return. The question is, do the facts before me "show a sufficient excuse?"

The affidavit sets out that Col. Kirk put his refusal on the ground that he had orders from his commander-in-chief who is the governor of the state, not to obey the writ. His Excellency avows that Col. Kirk was acting under his orders. So, we have this case: Col. Kirk is commanded by the chief justice to produce the body. He is ordered by his commander-in-chief not to obey the writ. What was the man to do! He elected to obey his orders. In my opinion there was sufficient excuse for refusing to return the writ. The motion is not allowed.

The act in question does not rest on the idea of punishing for *a contempt of the judge or court*, but of compelling a return to the writ, and the production of the body. It is a substitute for the provision in the old *habeas corpus act* which punished the officer or person refusing or neglecting to make due return "upon conviction by indictment," with a fine of $500 for the first offence, of $1,000 and incapacity to hold office for the second. The late act is an improvement on the former, by substituting the speedy remedy of attachment in place of indictment, and the severe punishment of imprisonment in place of fine. Both acts are evidently intended to punish for not making return and the last is also intended for the immediate relief of the party in whose behalf the writ is issued. The motion of punishment for a contempt of the judge or court is not involved in either act, certainly not in that of 1868–'69; that is pro-

vided for by "the contempt act," (same session). The proceeding is, by *a rule to show cause* why an attachment should not issue. And yet I was urged, with much vehemence, by learned and aged counsel to rule Col. Kirk up for a contempt of the chief justice in this: the affidavit of service sets out that Col. Kirk when the writ was served said, "Tell them such things are "played out," I have my orders from Governor Holden and shall not obey the writ." "I will surrender them on Governor Holden's order but not otherwise, unless they send a sufficient force to whip me." This, as was well said by Mr. Badger, is the language of a rude soldier, and not as courteous as we usually find in judicial proceedings. The motion for a rule to show cause for this contempt is not pertinent to the matter now on hand. The evidence on which it rests comes in a questionable shape—extraneous matter put into an affidavit of service to excite prejudice, and a motion made at the instance of one who is under arrest for the horrid crime of murder by midnight assassination! At a time when, as Mr. Bragg feelingly remarked, "we are in the last ditch, we look to the judiciary as our only hope. If that fails us, the country is gone! gone! gone!" I do not feel it to be my duty to leave grave matters, and then turn aside to put a rule on a rude soldier to show cause for making a flippant speech. I will be borne out by every member of the profession in saying, during the thirty five years I have had the honor of a seat on the bench, I have never been slow to punish for contempt and preserve the dignity of the court, when I believed there was an attempt to assail it. I know my duty and trust I have firmness enough to discharge it. These remarks seem called for because of the earnestness with which the motion was pressed in language more courtly but fully as strong as that used by the rude soldier, and the excited manner in which I was reminded of my duty and exhorted to perform it; nay, the oath of office was read to me and I had the benefit of hearing read much of the lofty language of Lord Mansfield.

3. The motion for a precept directed to the sheriff of some

county to bring the petitioner forthwith before me, and if necessary, to take with him the power of the county, is based on the 17th and 18th sections of the *habeas corpus* acts.

"The court or judge may direct a precept to any sheriff, coroner or other person, to be designated therein, commanding him to bring forthwith before such court or judge the party (wherever to be found) for whose benefit the writ of *habeas corpus* shall have been granted." "In the execution of this writ the sheriff or person designated may call out the power of the county."

The petitioner is entitled to this writ; the only question is, to whom shall it be directed. The motion is that it should be directed to the sheriff of some county.

I have considered the matter fully, and have come to the conclusion not to direct it to a sheriff. The act gives a discretion. In the present condition of things, the counties of Alamance and Caswell declared to be in a state of insurrection and occupied by military forces, and the public mind feverishly excited; it is highly probable, nay, in my opinion, certain, that a writ in the hands of a sheriff (with authority to call out the power of the county,) by which he is commanded with force, if necessary, to take the petitioner out of the hands of the military authorities, will plunge the whole state into civil war.

If the sheriff demands the petitioner of Col. Kirk, with his present orders, he will refuse, and then comes war. The country has had war enough. But it was said by the counsel of the petitioner, "if in the assertion of civil liberty, war comes, let it come! The blood will not be on your hands or on ours; it will be on all who disregard the sacred writ of *habeas corpus*. Let justice be done if the heavens fall."

It would be to act with the impetuosity of youth and not with the calmness of age, to listen to such counsels. "Let justice be done if the heavens fall," is a beautiful figure of speech, quoted by every one of the five learned counsel.

Justice must be done, or the power of the judiciary be exhausted, but I would forfeit all claims to prudence tempered with firm-

ness, should I, without absolute necessity, add fuel to the fla and plunge the country into civil war, provided my duty can fully discharged without that awful consequence. Wisd dictates if justice can be done "let heaven stand." Unless t Governor revokes his orders, Col. Kirk will resist; that appe from the affidavit of service.

The second branch of the motion, that the power of t county be called out if necessary, to aid in taking the petition by force out of the hands of Kirk, is as difficult of solution the first.

The power of the county or "*posse comitatus*," means *men of the county in which the writ is to be executed;* in tl instance Caswell, and that county is declared to be in a state insurrection. Shall *insurgents* be called out by the person w is to execute the writ to join in conflict with the military for of the state?

It is said a sufficient force will volunteer from other co ties; they may belong to the association, or be persons w sympathize with it. But the "*posse comitatus*" must co from the county where the writ is to be executed; it would illegal to take men from other counties. This is settled la shall illegal means be resorted to in order to execute a writ?

Again; every able bodied man in the state belongs to t militia. The governor is, by the constitution, "Command in-Chief of the militia of the State," art. 13, sec. 8. So tl power of the county is composed of men who are under tl command of the governor; shall these men be required violate with force, the orders of their commander-in-chief, a do battle with his other forces that are already in the fiel In short, the whole physical power of the state is by the co stitution under the control of the governor; the judiciary h only a moral power; by the theory of the constitution the can be no conflict between these two branches of the gover ment.

The writ will be directed to the marshal of the supren court with instructions to exhibit it, and a copy of this opinio

to his excellency, the governor. If he orders the petitoner to be delivered to the marshal, well; if not, following the example of Chief Justice Taney, in Merriman's case, (Annual Cyclopœdia for the year 1861, page 555,) I have discharged my duty; the power of the judiciary is exhausted, and the responsibility must rest on the executive.

(Signed,) PEARSON.

EXECUTIVE DEPARTMENT OF NORTH CAROLINA,
Raleigh, July 26th, 1870.

To the Honorable R. M. PEARSON,
Chief Justice of the Supreme Court of North Carolina:

SIR:—I have had the honor to receive, by the hands of the Marshal of the Supreme Court, a copy of your opinion in the matter of A. G. Moore; and the Marshall has informed me of the writ in his hands for the body of said Moore, now in the custody of my subordinate officer Col. George W. Kirk.

I have declared the counties of Alamance and Caswell in a state of insurrection and have taken military possession of them—this your Honor admits I have the power to do "under the constitution and laws," and not only this, but "to do *all* things necessary to suppress the insurrection" including the power to "arrest all *suspected* persons" in the above mentioned counties.

Your Honor has thought proper also to declare that the citizens of the counties of Alamance and Caswell are *insurgents*, as the result of the constitutional and lawful action of the Executive and that, therefore, you will not issue the writ of for the production of the body of Moore to any of the men of of the said counties, that the *posse comitatus* must come from the county where the writ is to be executed," and that any other means to enforce the writ would be illegal.

I have official and reliable information that in the counties above named during the last twelve months, not less than one hundred persons "in the peace of God and the State," have

been taken from their homes and scourged mainly, if n entirely, on account of their political opinions; that eig murders have been committed, including that of a state senat on the same account; that another state senator has been co pelled from fear for his life to make his escape to a dista state. I have reason to believe that the governments of t said counties have been mainly, if not entirely in the hands men who belong to the Kuklux Klan, whose members ha perpetrated the atrocities referred to; and that these coun governments have not merely omitted to ferret out and bri to justice those of this Klan who have thus violated the law, b that they have actually shielded them from arrest and puni ment. The state judicial power in the said counties, though the hands of energetic, learned and upright men, has not be able to bring criminals to justice; indeed it is my opinic based on facts that have come to my knowledge, that the l of the judge whose duty it is to ride the circuit to which t said counties belong, has not been safe, on account of the hatr entertained towards him by the Klan referred to, because his wish and purpose to bring said criminals to justice. F be it known to your Honor, that there is a wide spread a formidable secret organization in this state, partly political a partly social in its objects; that this organization is know first, as "*The Constitutional Union Guard;*" secondly "*The White Brotherhood;*" thirdly as "*The Invisible E pire*"—that the members of this organization are united l oaths which ignore or repudiate the ordinary oaths or oblig tions that rest upon all other citizens to respect the laws a to uphold the government; that these oaths inculcate hatr between the two races that inhabit this State; that the me bers of this Klan are irreconcilably hostile to the great prin ples of political and civil equality on which the government this State has been reconstructed; that these Klans meet secret, in disguise, with arms, in uniform of a certain kind i tended to conceal their persons and their horses, and to terri those whom they assault, or among whom they move; th

they hold their camps in secret places, and decree judgment against their peaceable fellow-citizens, from mere intimidation to scourging, mutilations and murder, and that certain persons of the klan are deputed to execute these judgments; that when the members of this Klan are arrested for violations of law, it is most difficult to obtain bills of indictment against them, and still more difficult to convict them; first, because some of the members, or their sympathizers, are almost always on the grand and petit juries, and secondly, because witnesses who are members or sympathizers unblushingly commit perjury to screen their confederates and associates in crime; that this klan thus constituted, and having in view the objects referred to, is very powerful in at least twenty-five counties of the state, and has had absolute control, for the last twelve months, of the counties of Alamance and Caswell.

Under these circumstances I would have been recreant to duty and faithless to my oath, if I had not exercised the power in the said counties which your honor has been pleased to say I have exercised constitutionally and lawfully; especially as since October, 1868, I have repeatedly, by proclamation and by letters, invoked public opinion to repress these evils, and warn criminals and offenders against the law of the state that must in the end overtake them if under the cloak of the klan referred to, they should persist in their course.

I beg to assure your honor that no one subscribes more thoroughly than I do to the great principles of *habeas corpus* and trial by jury. Except in extreme cases in which, beyond all question, "the safety of the state is the supreme law," these privileges of *habeas corpus* and trial by jury should be maintained.

I have declared that, in my judgment, your honor and all the other civil and judicial authorities are unable *at this time* to deal with the *insurgents*. The civil and the military are alike constitutional powers; the civil to protect life and property when it can, and the military only when the civil power has failed.

As the chief executive I seek
judicial power.

Your honor has done your
with you I seek to do mine.

It is not I, nor the military
civil authority; that has been
counties referred to. I do not
authority until I "suppress t
honor declares I have the powe
I can surrender the insurgents
authority is restored. It woul
that the civil authority was
against the insurgents and the
the civil authority.

My oath to support the const
me to, "suppress the insurrecti
in the counties referred to, and
I renew to your honor expressi
the civil authority, and my e
may soon be restored to every
the state.

I have the honor to be,
With great
Your

(Signed)

On the 27th July, the council

1. For an attachment, or rul
governor for not making a su
habeas corpus;

2. If that be not proper, the
against George W. Kirk;

3. That the marshal of the
proceed further in the executio
to bring the body of the prison

OPINION.

The first motion is refused: The chief justice of the supreme court has no power under the *habeas corpus* act, to order the arrest of the governor of the state.

The second motion is refused: It has been adjudicated by me, that Col. Kirk had a reasonable excuse, his orders having been avowed by the governor.

The third motion is refused: It would be an idle form to require the marshal to go to the camp of Col. Kirk and make a demand, as the governor has taken upon himself the responsibility of declining to produce the body of the petitioner. In *Stacey's case*, 10 *Johnson*, 327, Chancellor Kent, on the return to a writ of *habeas corpus* directed to Gen. Lewis, held the return: "the party is not in my custody," to be insufficient, and that it should have been: "the party is not in my custody, or *under my control*." The custody of a subordinate is the custody of a superior.

The petitioner, if it will serve his purpose of applying to the chief justice of the supreme court of the United States for a writ of *habeas corpus* as was suggested by his counsel—may take the fact to be, that the marshal proceeded to the camp of Col. Kirk, and informed him of the writ, and that Col. Kirk relied on his orders and refused to deliver the body of the petitioner.

(Signed,) PEARSON.

STATE OF NORTH CAROLINA,

To the Honorable RICHMOND M. PEARSON,
Chief Justice of the Supreme Court of North Carolina.

The petition of John Kerr, Samuel P. Hill, N. M. Roan, Robert Roan, F. A. Wiley, James C. Williamson, William B. Bowe, Yancey Jones, A. G. Yancey, Thomas J. Womack, Jas.

R. Fowler, J. C. Griffith, A. A. Mitchell, J. T. Mitchell, Z. Hooper, John McKee, J. M. Neal, Barzillia Graves—

Respectfully showeth unto your honor that they are e citizens of the county of Caswell in said state; that on Fri the 18th day of July, A. D. 1870, while each of them about his lawful business and in no way violating the laws of land, he was arrested by a body of armed men purporting to the command of one Geo. W. Kirk, who claimed to act a military officer; that they were each delivered by said bod armed men into the custody of the said George W. Kirk, he gave them to understand that they were arrested by order; that the said Geo. W. Kirk now has your petitioner his custody and holds and deprives them of their liberty in court house in Yanceyville in said county; that they dem ded to know by what authority each had been arrested, no authority was given; that they are each informed that warrant or legal process issued by any lawful officer, or ind any one commanding their arrest; that their said arrest without authority of law; that they, each speaking himself, say that they are not aware of any cause for s arrest; that they are civil and law-abiding citizens; that s arrest was without warrant or authority; that such arrest a detention is illegal because made without any lawful prec and for no alleged offence or any offence so far as petition know; that the matter of their said arrest has not been exa ined and adjudicated upon any writ of *habeas corpus* here fore issued to the knowledge of your petitioners; that each your petitioners has been so arrested and is so detained by said George W. Kirk and deprived of his liberty and agai his will; that said arrest wast made without cause so far each knows and without any process of law.

In consideration of the premises, may it please your ho to grant unto each of your petitioners the writ of *habeas corp* to be directed to the said George W. Kirk, commanding h to produce each of your petititioners before your hon together with the cause of such arrest and detention, to the e

that each of your petitioners may be restored to his rights and liberties as a citizen of the state.

(Signed) BRAGG, BATTLE, MOORE & MERRIMON,
Attorneys for Petitioners.

STATE OF NORTH CAROLINA,
Wake County.

Emory B. Holden, Attorney for the petitioners named in the foregoing makes oath that he has heard read the said petition; that he saw the said petitioners in the custody of the said George W. Kirk, in the Court House at Yanceyville and knows that the said Kirk so holds and detains each of said petitioners; that he verily believes that the facts stated in the petition are substantially true as stated; that he knows the petitioners and learned the facts as stated from actual observation and what he heard from them and others.

(Signed) E. B. HOLDEN.

Sworn and subscribed before me the 21st day of July, A. D. 1870.

(Signed) S. D. HARRISON, J. P.

Writs of *habeas corpus* were issued by Chief Justice Pearson in the name of the several parties named in the petition—the one in the name of John Kerr is as follows—and the others are indentical, changing the name only, and like returns are made upon each of them.

STATE OF NORTH CAROLINA,

To GEORGE W. KIRK—*Greeting:*

We command you, that the body of John Kerr being confined and detained in your custody, as it is said, together with the day and cause of his capture and detention, by whatever name he may be called, you have before me, Richmond M. Pearson, chief justice of the supreme court of the state aforesaid, at the chamber of the supreme court in the city of

Raleigh, immediately after the receipt of this writ, to do and receive what shall be then and there considered in his behalf.

Witness, Richmond M. Pearson, chief justice of the supreme court, this the 23d day of July, A. D., 1870.

(Signed,) R. M. PEARSON,
Chief Justice Sup. Court.

David A. Wicker, marshal of the supreme court, is hereby authorized and commanded, forthwith to make service of this writ on G. W. Kirk as provided by law in such cases, and make return, how he has executed the same, at Raleigh.

(Signed,) R. M. PEARSON,
Chief Justice Sup. Court.

July 30th, 1870.

I executed the within writ by leaving a copy thereof with George W. Kirk, at the court house in Yanceyville, Caswell county, N. C., this first day of August, 1870.

(Signed,) DAVID A. WICKER,
Marshal.

HEAD QUARTER'S 2d Reg't N. C. S. T.
Camp Holden, Yanceyville, N. C.,
August 1st, 1870.

I respectfully reply to the service of the writ in the case of John Kerr, Samuel P. Hill, Jesse C. Griffith, F. A. Wiley, J. T. Mitchell, Thomas J. Yomack, A. G. Yancey, John McKee, A. A. Mitchell, Yancey Jones, J. M. Neal, W. B. Bowe, Barzillia Graves, N. M. Roan, Robert Roan, James R. Fowler, M. G. Hooper, James C. Williamson and Peter H. Williamson, that I hold the prisoners under orders from W. W. Holden, governor and commander-in-chief of militia.

(Signed) GEO. W. KIRK,
Col. Com'd 2d Reg't N. C. S. T.

AT CHAMBERS, Aug. 2d, 1870.

JOHN KERR, *ex parte.*

On the return of the marshall, Mr. Battle submitted two motions:

1. An attachment against G. W. Kirk for not making a suffiient return.

2. A writ to some competent person to bring the body and call out the power of the county, if necessary.

The first motion not allowed. The objection, that the return, as the counsel terms it, is not sworn to, and other objections taken, are not relevant, for this does not purport to be *a return*, but a refusal to make return by the order of the governor.

Treating it as a refusal, the motion is not allowed for the reasons set out in the opinions delivered by me. I can say no more than what I have already said: The power of the judiciary is exhausted—I have no *posse comitatus:* In this particular, my situation differs from that of Chiet Justice Taney, in "Merrimon's case." He had a *posse comitatus*, at his command—but considered the power of the judiciary exhausted, without calling it out. He did not deem it his duty to command the marshal with the *possse*, "to storm a fort."

It is gratifying to be able to say that the other justices have been in unreserved conference with me, and all concur in the *habeas corpus* proceedings.

(Signed) R. M. PEARSON,
Ch. J. S. C.

EXECUTIVE DEPARTMENT,
STATE OF NORTH CARODINA,
Raleigh, Aug. 15th, 1870.

To the Honorable R. M. PEARSON,
Chief Justice Supreme Court of North Carolina:

DEAR SIR: In my answer to the notices served on me by the marshal of the supreme court, in the matter of Adolphus G.

Moore and others *ex parte*, I stated to your honor, that at that time the public interest forbade me to permit Col. Geo. W. Kirk to bring before your honor the said parties; at the same time I assured your honor that as soon as the safety of the state should justify it, I would cheerfully restore the civil power and cause the said parties to be brought before you, together with the cause of their capture and detention.

That time has arrived, and I have ordered Col. George W Kirk to obey the writs of *habeas corpus* issued by your honor.

As the number of prisoners and witnesses is considerable, I would suggest to your honor that it would be more convenient to make return to the writ at the capitol in Raleigh.

Col. Kirk is prepared to make such returns as soon as your honor shall arrive in Raleigh.

With great respect,
Your obedient servant,
W. W. HOLDEN, *Governor.*

RALEIGH, Aug. 18th, 1870.

To His Excellency GOV. HOLDEN:

DEAR SIR:—Your communication of the 15th inst, was handed to me by Mr. Neathery. I will be in the supreme court room at 10 o'clock, a. m., inst., to receive the return by Col. Kirk, of the bodies of A. G. Moore. and others, (in whose behalf writs of *habeas corpus* have heretofore been issued here,) together with the cause of their arrest and detention.

Receiving the return after the delay to which you allude, of the several weeks, is not to be taken as concurring on my part in the necessity for the delay, or as assuming any portion of the responsibility in regard to it.

The entire responsibility rested on you. I was unwilling to plunge the State into a civil war upon a mere question of time.

With great respect, your ob't servant,
(Signed) R. M. PEARSON, C. J. S. C.

AT CHAMBERS, August 18th, 1870.

To the Honorable R. M. PEARSON.

Chief Justice of North Carolina:

In the matter of the several petitions of John Kerr, Samuel P. Hill, N. M. Roan, Robert Roan, F. A. Wiley and others, for writs of *habeas corpus*, your honor having stated in the opinions filed in the several cases bearing date Aug. 2nd, 1870, that your power was exhausted; and the said petitioners, in consequence thereof, deeming themselves without remedy from the judiciary of the state, and having obtained writs of *habeas corpus* from Hon. G. W. Brooks, judge of the district court of the United States for the district of North Carolina, returnable before him at chambers, in Salisbury, this day, as counsel for the said prisoners, and on behalf of our associate counsel we respectfully ask leave for the said prisoners respectively to withdraw their said petitions; and we do hereby abondon further proceedings under the writs in their several cases.

(Signed) W. H. BATTLE & SONS,
Counsel for the Petioners.

OPINION.

AT CHAMBERS, Aug. 19th, 1870.

The motion on the part of the prisoner to enter a *nolle prosequi* or *retraxit*, is allowed. The proceeding has taken a turn for which my experience, and the labor of the learned counsel, furnish no precedent.

1. Upon a "common sense" view of the question, I can see no reason why the prisoner if so advised, should not be allowed to withdraw his application.

2. The Attorney General, anticipating the course that would be taken on the part of the prisoner, had applied for and obtained a bench warrant. This cuts off all collateral questions, and reduces the matter to this; if probable cause can be made out on the part of the State, I shall commit the prisoner for trial in the due course of law; if probable cause be not shown, I shall discharge him.

I hope it is not necessary, but from what I see in the newspapers, I think proper to say that I enter upon this investigation of the question of "probable cause" with an eye single to truth and justice.

3. It was said by Mr. Battle, of counsel for the prisoner, that upon information I was obliged to take notice of the fact that the prisoner had made application to his honor, Judge Brooks, for a writ of *habeas corpus*, which his honor had granted. That is true, but I am so entirely satisfied that his honor has no jurisdiction to pass upon a charge of murder, and to bind prisoners over for a trial before the state courts, that I take the responsibility of proceeding on this bench warrant, without fear of any conflict of jurisdiction.

The prisoner is now out of the hands of the military, and in the hands of the civil authority, and will be dealt with according to law.

Now we have plain sailing; if there be "probable cause" against the prisoner, let the state prove it.

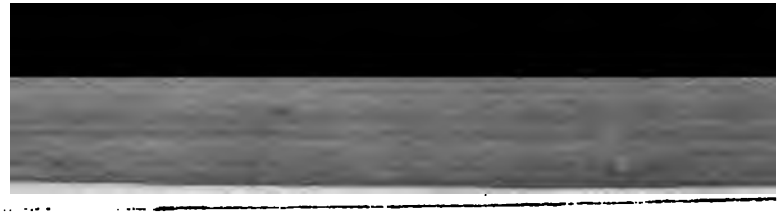
No more need be said about the manner in which the military was organized, or about a traverse of the fact declared by his Excellency, that the county of Caswell was in a state of insurrection.

STATE OF NORTH CAROLINA,
Office of Clerk of Supreme Court,
Raleigh, January 30th, 1871.

I hereby certify that the foregoing are true copies of the original papers, in cases of *habeas corpus* disposed of at Chambers by Chief Justice Pearson, growing out of military arrests during the months of July and August, 1870, said papers having been filed with me for safe keeping by his honor the Chief Justice.

In witness whereof I hereto set my hand, at office at the date aforesaid.

WM. H. BAALEY, Clerk.



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